

## V

### MODERN NATURAL RIGHT



THE most famous and the most influential of all modern natural right teachers was John Locke. But Locke makes it particularly difficult for us to recognize how modern he is or how much he deviates from the natural right tradition. He was an eminently prudent man, and he reaped the reward of superior prudence: he was listened to by many people, and he wielded an extraordinarily great influence on men of affairs and on a large body of opinion. But it is of the essence of prudence that one know when to speak and when to be silent. Knowing this very well, Locke had the good sense to quote only the right kind of writers and to be silent about the wrong kind, although he had more in common, in the last analysis, with the wrong kind than with the right. His authority seems to be Richard Hooker, the great Anglican divine, distinguished by elevation of sentiment and sobriety; "the judicious Hooker," as Locke, following others, likes to call him. Now Hooker's conception of natural right is the Thomistic conception, and the Thomistic conception, in its turn, goes back to the Church Fathers, who, in their turn, were pupils of the Stoics, of the pupils of pupils of Socrates. We are then apparently confronted with an unbroken tradition of perfect respectability that stretches from Socrates to Locke. But the moment we take the trouble to confront Locke's teaching as a whole with Hooker's teaching as a whole, we become aware that, in spite of a certain agreement between Locke and Hooker, Locke's conception of natural right is fundamentally different from Hooker's. The notion of natural right had un-



dergone a fundamental change between Hooker and Locke. A break in the natural right tradition had occurred on the way. This is not surprising. The period between Hooker and Locke had witnessed the emergence of modern natural science, of nonteleological natural science, and therewith the destruction of the basis of traditional natural right. The man who was the first to draw the consequences for natural right from this momentous change was Thomas Hobbes—that imprudent, impish, and iconoclastic extremist, that first plebeian philosopher, who is so enjoyable a writer because of his almost boyish straightforwardness, his never failing humanity, and his marvelous clarity and force. He was deservedly punished for his recklessness, especially by his countrymen. Still, he exercised a very great influence on all subsequent political thought, Continental and even English, and especially on Locke—on the judicious Locke, who judiciously refrained as much as he could from mentioning Hobbes's “justly decried name.” To Hobbes we must turn if we desire to understand the specific character of modern natural right.

#### A. HOBBS

Thomas Hobbes regarded himself as the founder of political philosophy or political science. He knew, of course, that the great honor which he claimed for himself was awarded, by almost universal consent, to Socrates. Nor was he allowed to forget the notorious fact that the tradition which Socrates had originated was still powerful in his own age. But he was certain that traditional political philosophy “was rather a dream than science.”<sup>1</sup>

Present-day scholars are not impressed by Hobbes's claim. They note that he was deeply indebted to the tradition which

1. *Elements of Law*, Ep. ded.; I, 1, sec. 1; 13, sec. 3, and 17, sec. 1. *De corpore*, Ep. ded.; *De cive*, Ep. ded. and praef.; *Opera Latina*, I, p. xc. *Leviathan*, chaps. xxxi (241) and xlvi (438). In the quotations from the *Leviathan*, figures in parentheses indicate the pages of the “Blackwell's Political Texts” edition.



he scorned. Some of them come close to suggesting that he was one of the last Schoolmen. Lest we overlook the wood for the trees, we shall reduce for a while the significant results of present-day polymathy into the compass of one sentence. Hobbes was indebted to tradition for a single, but momentous, idea: he accepted on trust the view that political philosophy or political science is possible or necessary.

To understand Hobbes's astonishing claim means to pay proportionate attention to his emphatic rejection of the tradition, on the one hand, and to his almost silent agreement with it, on the other. For this purpose one must first identify the tradition. More precisely, one must first see the tradition as Hobbes saw it and forget for a moment how it presents itself to the present-day historian. Hobbes mentions the following representatives of the tradition by name: Socrates, Plato, Aristotle, Cicero, Seneca, Tacitus, and Plutarch.<sup>2</sup> He then tacitly identifies the tradition of political philosophy with a particular tradition. He identifies it with that tradition whose basic premises may be stated as follows: the noble and the just are fundamentally distinguished from the pleasant and are by nature preferable to it; or, there is a natural right that is wholly independent of any human compact or convention; or, there is a best political order which is best because it is according to nature. He identifies traditional political philosophy with the quest for the best regime or for the simply just social order, and therefore with a pursuit that is political not merely because it deals with political matters but, above all, because it is animated by a political spirit. He identifies traditional political philosophy with that particular tradition that was public spirited or—to employ a term which is loose indeed but at present still easily intelligible—that was “idealistic.”

When speaking of earlier political philosophers, Hobbes does not mention that tradition whose most famous represent-

2. *De cive*, praef., and XII, 3; *Opera Latina*, V, 358–59.



atives might be thought to be "the sophists," Epicurus and Carneades. The anti-idealistic tradition simply did not exist for him—as a tradition of political philosophy. For it was ignorant of the very idea of political philosophy as Hobbes understood it. It was indeed concerned with the nature of political things and especially of justice. It was also concerned with the question of the right life of the individual and therefore with the question of whether or how the individual could use civil society for his private, nonpolitical purposes: for his ease or for his glory. But it was not political. It was not public spirited. It did not preserve the orientation of statesmen while enlarging their views. It was not dedicated to the concern with the right order of society as with something that is choiceworthy for its own sake.

By tacitly identifying traditional political philosophy with the idealistic tradition, Hobbes expresses, then, his tacit agreement with the idealistic view of the function or the scope of political philosophy. Like Cicero before him, he sides with Cato against Carneades. He presents his novel doctrine as the first truly scientific or philosophic treatment of natural law; he agrees with the Socratic tradition in holding the view that political philosophy is concerned with natural right. He intends to show "what is law, as Plato, Aristotle, Cicero, and divers others have done"; he does not refer to Protagoras, Epicurus, or Carneades. He fears that his *Leviathan* might remind his readers of Plato's *Republic*; no one could dream of comparing the *Leviathan* to Lucretius' *De rerum natura*.<sup>3</sup>

Hobbes rejects the idealistic tradition on the basis of a fundamental agreement with it. He means to do adequately what the Socratic tradition did in a wholly inadequate manner. He means to succeed where the Socratic tradition had failed. He traces the failure of the idealistic tradition to one fundamental

3. *Elements*, Ep. ded.; *Leviathan*, chaps. xv (94-95), xxvi (172), xxxi (241), and xlvi (437-38).



mistake: traditional political philosophy assumed that man is by nature a political or social animal. By rejecting this assumption, Hobbes joins the Epicurean tradition. He accepts its view that man is by nature or originally an a-political and even an a-social animal, as well as its premise that the good is fundamentally identical with the pleasant.<sup>4</sup> But he uses that a-political view for a political purpose. He gives that a-political view a political meaning. He tries to instil the spirit of political idealism into the hedonistic tradition. He thus became the creator of political hedonism, a doctrine which has revolutionized human life everywhere on a scale never yet approached by any other teaching.

The epoch-making change which we are forced to trace to Hobbes was well understood by Edmund Burke: "Boldness formerly was not the character of atheists as such. They were even of a character nearly the reverse; they were formerly like the old Epicureans, rather an unenterprising race. But of late they are grown active, designing, turbulent, and seditious."<sup>5</sup> Political atheism is a distinctly modern phenomenon. No pre-modern atheist doubted that social life required belief in, and worship of, God or gods. If we do not permit ourselves to be deceived by ephemeral phenomena, we realize that political atheism and political hedonism belong together. They arose together in the same moment and in the same mind.

For in trying to understand Hobbes's political philosophy we must not lose sight of his natural philosophy. His natural

4. *De cive*, I, 2; *Leviathan*, chap. vi (33). Hobbes speaks more emphatically of self-preservation than of pleasure and thus seems to be closer to the Stoics than to the Epicureans. Hobbes's reason for putting the emphasis on self-preservation is that pleasure is an "appearance" whose underlying reality is "only motion," whereas self-preservation belongs to the sphere not only of "appearance" but of "motion" as well (cf. Spinoza, *Ethics*, III, 9 schol. and 11 schol.). Hobbes's emphasizing self-preservation rather than pleasure is then due to his notion of nature or of natural science and has therefore an entirely different motivation than the seemingly identical Stoic view.

5. *Thoughts on French Affairs*, in *Works of Edmund Burke* ("Bohn's Standard Library," Vol. III), p. 377.



philosophy is of the type classically represented by Democritean-Epicurean physics. Yet he regarded, not Epicurus or Democritus, but Plato, as "the best of the ancient philosophers." What he learned from Plato's natural philosophy was not that the universe cannot be understood if it is not ruled by divine intelligence. Whatever may have been Hobbes's private thoughts, his natural philosophy is as atheistic as Epicurean physics. What he learned from Plato's natural philosophy was that mathematics is "the mother of all natural science."<sup>6</sup> By being both mathematical and materialistic-mechanistic, Hobbes's natural philosophy is a combination of Platonic physics and Epicurean physics. From his point of view, pre-modern philosophy or science as a whole was "rather a dream than science" precisely because it did not think of that combination. His philosophy as a whole may be said to be the classic example of the typically modern combination of political idealism with a materialistic and atheistic view of the whole.

Positions that are originally incompatible with one another can be combined in two ways. The first way is the eclectic compromise which remains on the same plane as the original positions. The other way is the synthesis which becomes possible through the transition of thought from the plane of the original positions to an entirely different plane. The combination effected by Hobbes is a synthesis. He may or may not have been aware that he was, in fact, combining two opposed traditions. He was fully aware that his thought presupposed a radical break with all traditional thought, or the abandonment of the plane on which "Platonism" and "Epicureanism" had carried on their secular struggle.

Hobbes, as well as his most illustrious contemporaries, was overwhelmed or elated by a sense of the complete failure of traditional philosophy. A glance at present and past contro-

6. *Leviathan*, chap. xlvi (438); *English Works*, VII, 346.



versies sufficed to convince them that philosophy, or the quest for wisdom, had not succeeded in transforming itself into wisdom. This overdue transformation was now to be effected. To succeed where tradition had failed, one has to start with reflections on the conditions which have to be fulfilled if wisdom is to become actual: one has to start with reflections on the right method. The purpose of these reflections was to guarantee the actualization of wisdom.

The failure of traditional philosophy showed itself most clearly in the fact that dogmatic philosophy had always been accompanied, as by its shadow, by skeptical philosophy. Dogmatism had never yet succeeded in overcoming skepticism once and for all. To guarantee the actualization of wisdom means to eradicate skepticism by doing justice to the truth embodied in skepticism. For this purpose, one must first give free rein to extreme skepticism: what survives the onslaught of extreme skepticism is the absolutely safe basis of wisdom. The actualization of wisdom is identical with the erection of an absolutely dependable dogmatic edifice on the foundation of extreme skepticism.<sup>7</sup>

The experiment with extreme skepticism was then guided by the anticipation of a new type of dogmatism. Of all known scientific pursuits, mathematics alone had been successful. The new dogmatic philosophy must therefore be constructed on the pattern of mathematics. The mere fact that the only certain knowledge which was available is not concerned with ends but "consists in comparing figures and motions only" created a prejudice against any teleological view or a prejudice in favor of a mechanistic view.<sup>8</sup> It is perhaps more accurate to say that it strengthened a prejudice already in existence. For it is probable that what was foremost in Hobbes's mind was

7. Compare Hobbes's agreement with the thesis of Descartes's first *Meditation*.

8. *Elements*, Ep. ded., and I, 13, sec. 4; *De cive*, Ep. ded.; *Leviathan*, chap. xi (68); cf. Spinoza, *Ethics*, I, Appendix.



the vision, not of a new type of philosophy or science, but of a universe that is nothing but bodies and their aimless motions. The failure of the predominant philosophic tradition could be traced directly to the difficulty with which every teleological physics is beset, and the suspicion arose quite naturally that, owing to social pressures of various kinds, the mechanistic view had never been given a fair chance to show its virtues. But precisely if Hobbes was primarily interested in a mechanistic view, he was inevitably led, as matters stood, to the notion of a dogmatic philosophy based on extreme skepticism. For he had learned from Plato or Aristotle that if the universe has the character ascribed to it by Democritean-Epicurean physics, it excludes the possibility of any physics, of any science, or, in other words, that consistent materialism necessarily culminates in skepticism. "Scientific materialism" could not become possible if one did not first succeed in guaranteeing the possibility of science against the skepticism engendered by materialism. Only the anticipatory revolt against a materialistically understood universe could make possible a science of such a universe. One had to discover or to invent an island that would be exempt from the flux of mechanical causation. Hobbes had to consider the possibility of a natural island. An incorporeal mind was out of the question. On the other hand, what he had learned from Plato and Aristotle made him realize somehow that the corporeal mind, composed of very smooth and round particles with which Epicurus remained satisfied, was an inadequate solution. He was forced to wonder whether the universe did not leave room for an artificial island, for an island to be created by science.

The solution was suggested by the fact that mathematics, the model of the new philosophy, was itself exposed to skeptical attack and proved capable of resisting it by undergoing a specific transformation or interpretation. To "avoid the cavils of the skeptics" at "that so much renowned evi-



dence of geometry . . . I thought it necessary in my definitions to express those motions by which lines, superficies, solids, and figures, were drawn and described." Generally stated, we have absolutely certain or scientific knowledge only of those subjects of which we are the causes, or whose construction is in our own power or depends on our arbitrary will. The construction would not be fully in our power if there were a single step of the construction that is not fully exposed to our supervision. The construction must be conscious construction; it is impossible to know a scientific truth without knowing at the same time that we have made it. The construction would not be fully in our power if it made use of any matter, i.e., of anything that is not itself our construct. The world of our constructs is wholly unenigmatic because we are its sole cause and hence we have perfect knowledge of its cause. The cause of the world of our constructs does not have a further cause, a cause that is not, or not fully, within our power; the world of our constructs has an absolute beginning or is a creation in the strict sense. The world of our constructs is therefore the desired island that is exempt from the flux of blind and aimless causation.<sup>9</sup> The discovery or invention of that island seemed to

9. *English Works*, VII, 179 ff.; *De homine*, X, 4-5; *De cive*, XVIII, 4, and XVII, 28; *De corpore*, XXV, 1; *Elements*, ed. Toennies, p. 168; fourth objection to Descartes's *Meditations*. The difficulty to which Hobbes's view of science is exposed is indicated by the fact that, as he says, all philosophy or science "weaves consequences" (cf. *Leviathan*, chap. ix) while taking its beginning from "experiences" (*De cive*, XVII, 12), i.e., that philosophy or science is ultimately dependent on what is given and not constructed. Hobbes tried to solve this difficulty by distinguishing between the sciences proper, which are purely constructive or demonstrative (mathematics, cinematics, and political science), and physics, which has a lower status than the former (*De corpore*, XXV, 1; *De homine*, X, 5). This solution creates a new difficulty, since political science presupposes the scientific study of the nature of man, which is a part of physics (*Leviathan*, chap. ix in both versions; *De homine*, Ep. ded.; *De corpore*, VI, 6). Hobbes apparently tried to solve this new difficulty in the following manner: it is possible to know the causes of the political phenomena both by descending from the more general phenomena (the nature of motion, the nature of living beings, the nature of man) to those causes and by ascending from the political phenomena themselves, as they are known



guarantee the possibility of a materialistic and mechanistic philosophy or science, without forcing one to assume a soul or mind that is irreducible to moved matter. That discovery or invention eventually permitted an attitude of neutrality or indifference toward the secular conflict between materialism and spiritualism. Hobbes had the earnest desire to be a "metaphysical" materialist. But he was forced to rest satisfied with a "methodical" materialism.

We understand only what we make. Since we do not make the natural beings, they are, strictly speaking, unintelligible. According to Hobbes, this fact is perfectly compatible with the possibility of natural science. But it leads to the consequence that natural science is and will always remain fundamentally hypothetical. Yet this is all we need in order to make ourselves masters and owners of nature. Still, however much man may succeed in his conquest of nature, he will never be able to understand nature. The universe will always remain wholly enigmatic. It is this fact that ultimately accounts for the persistence of skepticism and justifies skepticism to a certain extent. Skepticism is the inevitable outcome of the unintelligible character of the universe or of the unfounded belief in its intelligibility. In other words, since natural things are, as such, mysterious, the knowledge or certainty engendered by nature necessarily lacks evidence. Knowledge based on the natural working of the human mind is necessarily exposed to doubt. For this reason Hobbes parts company with premodern nominalism in particular. Premodern nominalism had faith in the natural working of the human mind. It showed this faith especially by teaching that *natura occulte operatur in universalibus*, or that the "anticipations" by virtue of which

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to everyone from experience, to the same causes (*De corpore*, VI, 7). At any rate, Hobbes emphatically stated that political science may be based on, or consist of, "experience" as distinguished from "demonstrations" (*De homine*, Ep. ded.; *De cive*, praef.; *Leviathan*, Introd. and chap. xxxii, beginning).



we take our bearings in ordinary life and in science are products of nature. For Hobbes, the natural origin of the universals or of the anticipations was a compelling reason for abandoning them in favor of artificial "intellectual tools." There is no natural harmony between the human mind and the universe.

Man can guarantee the actualization of wisdom, since wisdom is identical with free construction. But wisdom cannot be free construction if the universe is intelligible. Man can guarantee the actualization of wisdom, not in spite of, but because of, the fact that the universe is unintelligible. Man can be sovereign only because there is no cosmic support for his humanity. He can be sovereign only because he is absolutely a stranger in the universe. He can be sovereign only because he is forced to be sovereign. Since the universe is unintelligible and since control of nature does not require understanding of nature, there are no knowable limits to his conquest of nature. He has nothing to lose but his chains, and, for all he knows, he may have everything to gain. Still, what is certain is that man's natural state is misery; the vision of the City of Man to be erected on the ruins of the City of God is an unsupported hope.

It is hard for us to understand how Hobbes could be so hopeful where there was so much cause for despair. Somehow the experience, as well as the legitimate anticipation, of unheard-of progress within the sphere which is subject to human control must have made him insensitive to "the eternal silence of those infinite spaces" or to the crackings of the *moenia mundi*. In fairness to him, one must add that the long series of disappointments which subsequent generations experienced have not yet succeeded in extinguishing the hope which he, together with his most illustrious contemporaries, kindled. Still less have they succeeded in breaking down the walls which he erected as if in order to limit his vision. The conscious constructs have indeed been replaced by the unplanned workings



of "History." But "History" limits our vision in exactly the same way in which the conscious constructs limited the vision of Hobbes: "History," too, fulfils the function of enhancing the status of man and of his "world" by making him oblivious of the whole or of eternity.<sup>10</sup> In its final stage the typically modern limitation expresses itself in the suggestion that the highest principle, which, as such, has no relation to any possible cause or causes of the whole, is the mysterious ground of "History" and, being wedded to man and to man alone, is so far from being eternal that it is coeval with human history.

To return to Hobbes, his notion of philosophy or science has its root in the conviction that a teleological cosmology is impossible and in the feeling that a mechanistic cosmology fails to satisfy the requirement of intelligibility. His solution is that the end or the ends without which no phenomenon can be understood need not be inherent in the phenomena; the end inherent in the concern with knowledge suffices. Knowledge as the end supplies the indispensable teleological principle. Not

10. Two quotations taken from authors who belong to opposed camps but to the same spiritual family may serve as illustrations. We read in Friedrich Engels' *Ludwig Feuerbach und der Ausgang der deutschen klassischen Philosophie*: "nichts besteht vor [der dialektischen Philosophie] als der ununterbrochene Prozess des Werdens und Vergehens, des Aufsteigens *ohne Ende* vom Niedern zum Höhern. . . . Wir brauchen hier nicht auf die Frage einzugehn, ob diese Anschauungsweise durchaus mit dem jetzigen Stand der Naturwissenschaft stimmt, die der Existenz der Erde selbst ein mögliches, ihrer Bewohnbarkeit aber *ein ziemlich sicheres Ende* vorhersagt, die also auch der Menschengeschichte nicht nur einen aufsteigenden, sondern auch einen absteigenden Ast zuerkennt. Wir befinden uns *jedenfalls noch ziemlich weit von dem Wendepunkt*." We read in J. J. Bachofen's *Die Sage von Tanaquil*: "Der Orient huldigt dem Naturstandpunkt, der Occident ersetzt ihn durch den geschichtlichen. . . . Man könnte sich versucht fühlen, in dieser *Unterordnung der göttlichen unter die menschliche Idee* die letzte Stufe des Abfalls von einem früheren erhabeneren Standpunkte zu erkennen. . . . Und dennoch enthält dieser Rückgang den Keim zu einem sehr wichtigen Fortschritt. Denn als solchen haben wir jede Befreiung unseres Geistes aus den lähmenden Fesseln einer kosmisch-physischen Lebensbetrachtung anzusehen. . . . Wenn der Etrusker bekümmerten Sinnes an die Endlichkeit seines Stammes glaubt, so freut der Römer sich der *Ewigkeit seines Staates, an welcher zu zweifeln er gar nicht fähig ist*." (The italics are not in the originals.)



the new mechanistic cosmology but what later on came to be called "epistemology" becomes the substitute for teleological cosmology. But knowledge cannot remain the end if the whole is simply unintelligible: *Scientia propter potentiam*.<sup>11</sup> All intelligibility or all meaning has its ultimate root in human needs. The end, or the most compelling end posited by human desire, is the highest principle, the organizing principle. But if the human good becomes the highest principle, political science or social science becomes the most important kind of knowledge, as Aristotle had predicted. In the words of Hobbes, *Dignissima certe scientiarum haec ipsa est, quae ad Principes pertinet, hominesque in regendo genere humano occupatos*.<sup>12</sup> One cannot leave it, then, at saying that Hobbes agrees with the idealistic tradition in regard to the function and scope of political philosophy. His expectation from political philosophy is incomparably greater than the expectation of the classics. No Scipionic dream illumined by a true vision of the whole reminds his readers of the ultimate futility of all that men can do. Of political philosophy thus understood, Hobbes is indeed the founder.

It was Machiavelli, that greater Columbus, who had discovered the continent on which Hobbes could erect his structure. When trying to understand the thought of Machiavelli, one does well to remember the saying that Marlowe was inspired to ascribe to him: "I . . . hold there is no sin but ignorance." This is almost a definition of the philosopher. Besides, no one of consequence ever doubted that Machiavelli's study of political matters was public spirited. Being a public

11. *De corpore*, I, 6. The abandonment of the primacy of contemplation or theory in favor of the primacy of practice is the necessary consequence of the abandonment of the plane on which Platonism and Epicureanism had carried on their struggle. For the synthesis of Platonism and Epicureanism stands or falls with the view that to understand is to make.

12. Aristotle *Nicomachean Ethics* 1141<sup>a</sup>20-22; *De cive*, praef.; cf. *Opera Latina*, IV, 487-88: the only serious part of philosophy is political philosophy.



spirited philosopher, he continued the tradition of political idealism. But he combined the idealistic view of the intrinsic nobility of statesmanship with an anti-idealistic view, if not of the whole, at any rate of the origins of mankind or of civil society.

Machiavelli's admiration for the political practice of classical antiquity and especially of republican Rome is only the reverse side of his rejection of classical political philosophy. He rejected classical political philosophy, and therewith the whole tradition of political philosophy in the full sense of the term, as useless: Classical political philosophy had taken its bearings by how man ought to live; the correct way of answering the question of the right order of society consists in taking one's bearings by how men actually do live. Machiavelli's "realistic" revolt against tradition led to the substitution of patriotism or merely political virtue for human excellence or, more particularly, for moral virtue and the contemplative life. It entailed a deliberate lowering of the ultimate goal. The goal was lowered in order to increase the probability of its attainment. Just as Hobbes later on abandoned the original meaning of wisdom in order to guarantee the actualization of wisdom, Machiavelli abandoned the original meaning of the good society or of the good life. What would happen to those natural inclinations of man or of the human soul whose demands simply transcend the lowered goal was of no concern to Machiavelli. He disregarded those inclinations. He limited his horizon in order to get results. And as for the power of chance, Fortuna appeared to him in the shape of a woman who can be forced by the right kind of men: chance can be conquered.

Machiavelli justified his demand for a "realistic" political philosophy by reflections on the foundations of civil society, and this means ultimately by reflections on the whole within which man lives. There is no superhuman, no natural, support for justice. All human things fluctuate too much to permit



their subjection to stable principles of justice. Necessity rather than moral purpose determines what is in each case the sensible course of action. Therefore, civil society cannot even aspire to be simply just. All legitimacy has its root in illegitimacy; all social or moral orders have been established with the help of morally questionable means; civil society has its root not in justice but in injustice. The founder of the most renowned of all commonwealths was a fratricide. Justice in any sense is possible only after a social order has been established; justice in any sense is possible only within a man-made order. Yet the founding of civil society, the supreme case in politics, is imitated, within civil society, in all extreme cases. Machiavelli takes his bearings not so much by how men live as by the extreme case. He believes that the extreme case is more revealing of the roots of civil society and therefore of its true character than is the normal case.<sup>13</sup> The root or the efficient cause takes the place of the end or of the purpose.

It was the difficulty implied in the substitution of merely political virtue for moral virtue or the difficulty implied in Machiavelli's admiration for the lupine policies of republican Rome<sup>14</sup> that induced Hobbes to attempt the restoration of the moral principles of politics, i.e., of natural law, on the plane of Machiavelli's "realism." In making this attempt he was mindful of the fact that man cannot guarantee the actualization of the right social order if he does not have certain or exact or scientific knowledge of both the right social order and the conditions of its actualization. He attempted, therefore, in the first place a rigorous deduction of the natural or moral law. To "avoid the cavils of the skeptics," natural law had to be made independent of any natural "anticipations" and therefore of the *consensus gentium*.<sup>15</sup> The predominant tradition had

13. Cf. Bacon, *Advancement of Learning* ("Everyman's Library" ed.), pp. 70-71.

14. *De cive*, Ep. ded.

15. *Ibid.*, II, 1.



defined natural law with a view to the end or the perfection of man as a rational and social animal. What Hobbes attempted to do on the basis of Machiavelli's fundamental objection to the utopian teaching of the tradition, although in opposition to Machiavelli's own solution, was to maintain the idea of natural law but to divorce it from the idea of man's perfection; only if natural law can be deduced from how men actually live, from the most powerful force that actually determines all men, or most men most of the time, can it be effectual or of practical value. The complete basis of natural law must be sought, not in the end of man, but in his beginnings,<sup>16</sup> in the *prima naturae* or, rather, in the *primum naturae*. What is most powerful in most men most of the time is not reason but passion. Natural law will not be effectual if its principles are distrusted by passion or are not agreeable to passion.<sup>17</sup> Natural law must be deduced from the most powerful of all passions.

But the most powerful of all passions will be a natural fact, and we are not to assume that there is a natural support for justice or for what is human in man. Or is there a passion, or an object of passion, which is in a sense antinatural, which marks the point of indifference between the natural and the nonnatural, which is, as it were, the *status evanescendi* of nature and therefore a possible origin for the conquest of nature or for freedom? The most powerful of all passions is the fear of death and, more particularly, the fear of violent death at the hands of others: not nature but "that terrible enemy of nature, death," yet death insofar as man can do something about it,

16. In the alternative title of the *Leviathan* (*The Matter, Form, and Power of a Commonwealth*) the end is not mentioned. See also what Hobbes says about his method in the Preface to *De cive*. He claims that he deduced the end from the beginning. In fact, however, he takes the end for granted; for he discovers the beginning by analyzing human nature and human affairs with that end (peace) in view (cf. *De cive*, I, 1, and *Leviathan*, chap. xi beginning). Similarly, in his analysis of right or justice, Hobbes takes for granted the generally accepted view of justice (*De cive*, Ep. ded.).

17. *Elements*, Ep. ded.



i.e., death insofar as it can be avoided or avenged, supplies the ultimate guidance.<sup>18</sup> Death takes the place of the *telos*. Or, to preserve the ambiguity of Hobbes's thought, let us say that the fear of violent death expresses most forcefully the most powerful and the most fundamental of all natural desires, the initial desire, the desire for self-preservation.

If, then, natural law must be deduced from the desire for self-preservation, if, in other words, the desire for self-preservation is the sole root of all justice and morality, the fundamental moral fact is not a duty but a right; all duties are derivative from the fundamental and inalienable right of self-preservation. There are, then, no absolute or unconditional duties; duties are binding only to the extent to which their performance does not endanger our self-preservation. Only the right of self-preservation is unconditional or absolute. By nature, there exists only a perfect right and no perfect duty. The law of nature, which formulates man's natural duties, is not a law, properly speaking. Since the fundamental and absolute moral fact is a right and not a duty, the function as well as the limits of civil society must be defined in terms of man's natural right and not in terms of his natural duty. The state has the function, not of producing or promoting a virtuous life, but of safeguarding the natural right of each. And the power of the state finds its absolute limit in that natural right and in no other moral fact.<sup>19</sup> If we may call liberalism that political doctrine which regards as the fundamental political fact the rights, as distinguished from the duties, of man and which identifies the function of the state with the protection or the

18. *Ibid.*, I, 14, sec. 6; *De cive*, Ep. ded., I, 7, and III, 31; *Leviathan*, chaps. xiv (92) and xxvii (197). One would have to start from here in order to understand the role of the detective story in present-day moral orientation.

19. *De cive*, II, 10 end, 18-19; III, 14, 21, 27 and annot., 33; VI, 13; XIV, 3; *Leviathan*, chaps. xiv (84, 86-87), xxi (142-43), xxviii (202), and xxxii (243).



safeguarding of those rights, we must say that the founder of liberalism was Hobbes.

By transplanting natural law on the plane of Machiavelli, Hobbes certainly originated an entirely new type of political doctrine. The premodern natural law doctrines taught the duties of man; if they paid any attention at all to his rights, they conceived of them as essentially derivative from his duties. As has frequently been observed, in the course of the seventeenth and eighteenth centuries a much greater emphasis was put on rights than ever had been done before. One may speak of a shift of emphasis from natural duties to natural rights.<sup>20</sup> But quantitative changes of this character become intelligible only when they are seen against the background of a qualitative and fundamental change, not to say that such quantitative changes always become possible only by virtue of a qualitative and fundamental change. The fundamental change from an orientation by natural duties to an orientation by natural rights finds its clearest and most telling expression in the teaching of Hobbes, who squarely made an unconditional natural right the basis of all natural duties, the duties being therefore only conditional. He is the classic and the founder of the specifically modern natural law doctrine. The profound change under consideration can be traced directly to Hobbes's concern with a human guaranty for the actualization of the right social order or to his "realistic" intention. The actualization of a social order that is defined in terms of man's duties is necessarily uncertain and even improbable; such an order may well appear to be utopian. Quite different is the case of a social order that is defined in terms of the rights of man. For the rights in question express, and are meant to express,

20. Cf. Otto von Gierke, *The Development of Political Theory* (New York, 1939), pp. 108, 322, 352; and J. N. Figgis, *The Divine Right of Kings* (2d ed.; Cambridge: At the University Press, 1934), pp. 221-23. For Kant it is already a question why moral philosophy is called the doctrine of duties and not the doctrine of rights (see *Metaphysik der Sitten*, ed. Vorlaender, p. 45).



something that everyone actually desires anyway; they hallow everyone's self-interest as everyone sees it or can easily be brought to see it. Men can more safely be depended upon to fight for their rights than to fulfil their duties. In the words of Burke: "The little catechism of the rights of men is soon learned; and the inferences are in the passions."<sup>21</sup> With regard to Hobbes's classic formulation, we add that the premises already are in the passions. What is required to make modern natural right effective is enlightenment or propaganda rather than moral appeal. From this we may understand the frequently observed fact that during the modern period natural law became much more of a revolutionary force than it had been in the past. This fact is a direct consequence of the fundamental change in the character of the natural law doctrine itself.

The tradition which Hobbes opposed had assumed that man cannot reach the perfection of his nature except in and through civil society and, therefore, that civil society is prior to the individual. It was this assumption which led to the view that the primary moral fact is duty and not rights. One could not assert the primacy of natural rights without asserting that the individual is in every respect prior to civil society: all rights of civil society or of the sovereign are derivative from rights which originally belonged to the individual.<sup>22</sup> The individual as such, the individual regardless of his qualities—and not merely, as Aristotle had contended, the man who surpasses humanity—had to be conceived of as essentially complete independently of civil society. This conception is implied in the contention that there is a state of nature which antedates civil society. According to Rousseau, "the philosophers who have examined the foundations of civil society have all of them felt the necessity to go back to the state of nature." It is true that

21. *Thoughts on French Affairs*, p. 367.

22. *De cive*, VI, 5-7; *Leviathan*, chaps. xviii (113) and xxviii (202-3).



the quest for the right social order is inseparable from reflection on the origins of civil society or on the prepolitical life of man. But the identification of the prepolitical life of man with "the state of nature" is a particular view, a view by no means held by "all" political philosophers. The state of nature became an essential topic of political philosophy only with Hobbes, who still almost apologized for employing that term. It is only since Hobbes that the philosophic doctrine of natural law has been essentially a doctrine of the state of nature. Prior to him, the term "state of nature" was at home in Christian theology rather than in political philosophy. The state of nature was distinguished especially from the state of grace, and it was subdivided into the state of pure nature and the state of fallen nature. Hobbes dropped the subdivision and replaced the state of grace by the state of civil society. He thus denied, if not the fact, at any rate the importance of the Fall and accordingly asserted that what is needed for remedying the deficiencies or the "inconveniences" of the state of nature is, not divine grace, but the right kind of human government. This antitheological implication of "the state of nature" can only with difficulty be separated from its intra-philosophic meaning, which is to make intelligible the primacy of rights as distinguished from duties: the state of nature is originally characterized by the fact that in it there are perfect rights but no perfect duties.<sup>23</sup>

23. *De cive*, praef.: "conditionem hominum extra societatem civilem (quam conditionem appellare liceat statum naturae)." Cf. Locke, *Treatises of Civil Government*, II, sect. 15. For the original meaning of the term, cf. Aristotle *Physics* 246<sup>a</sup>10-17; Cicero *Offices* i. 67; *De finibus* iii. 16, 20; *Laws* iii. 3 (cf. also *De cive*, III, 25). According to the classics, the state of nature would be the life in a healthy civil society and not the life antedating civil society. The conventionalists assert, indeed, that civil society is conventional or artificial, but this implies a depreciation of civil society. Most conventionalists do not identify the life antedating civil society with the state of nature: they identify the life according to nature with the life of human fulfilment (be it the life of the philosopher or the life of the tyrant); the life according to nature is therefore impossible in the primeval condition that antedates civil society. On the other hand, those



If everyone has by nature the right to preserve himself, he necessarily has the right to the means required for his self-preservation. At this point the question arises as to who is to be the judge of what means are required for a man's self-preservation or as to which means are proper or right. The classics would have answered that the natural judge is the man of practical wisdom, and this answer would finally lead back to the view that the simply best regime is the absolute rule of the wise and the best practicable regime is the rule of gentlemen. According to Hobbes, however, everyone is by nature the judge of what are the right means to his self-preservation. For, even granting that the wise man is, in principle, a better

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conventionalists who identify the life according to nature, or the state of nature, with the life antedating civil society, regard the state of nature as preferable to civil society (cf. Montaigne, *Essais*, II, 12, *Chronique des lettres françaises*, III, 311). Hobbes's notion of the state of nature presupposes the rejection of both the classic and the conventionalist view, for he denies the existence of a natural end, of a *summum bonum*. He identifies, therefore, the natural life with the "beginning," the life dominated by the most elementary wants; and at the same time he holds that this beginning is defective and that the deficiency is remedied by civil society. There is, then, according to Hobbes, no tension between civil society and what is natural, whereas, according to conventionalism, there is a tension between civil society and what is natural. Hence, according to conventionalism, the life according to nature is superior to civil society, whereas, according to Hobbes, it is inferior to it. We add that conventionalism is not necessarily egalitarian, whereas Hobbes's orientation necessitates egalitarianism. According to Thomas Aquinas, the *status legis naturae* is the condition in which man lived prior to the revelation of the Mosaic law (*Summa theologiae* i. 2. qu. 102, a. 3 ad 12). It is the state in which the Gentiles live and therefore a condition of civil society (cf. Suarez, *Tr. de legibus*, I, 3, sec. 12; III, 11 ["in pura natura, vel in gentibus"]; III, 12 ["in statu purae naturae, si in illo esset respublica verum Deum naturaliter colens"]; also Grotius *De jure belli* ii. 5, sec. 15. 2 uses "status naturae" in contradistinction to the "status legis Christianae"; when Grotius [iii. 7, sec. 1] says: "citra factum humanum aut primaevo naturae statu," he shows, by the addition of "primaevo," that the state of nature as such is not "citra factum humanum" and hence does not essentially antedate civil society. However, if the human law is regarded as the outcome of human corruption, the *status legis naturae* becomes that condition in which man was subject to the law of nature alone, and not yet to any human laws (Wyclif, *De civili dominio*, II, 13, ed. Poole, p. 154). For the prehistory of Hobbes's notion of the state of nature cf. also Soto's doctrine as reported by Suarez, *op. cit.*, II, 17, sec. 9.



judge, he is much less concerned with the self-preservation of a given fool than is the fool himself. But if everyone, however foolish, is by nature the judge of what is required for his self-preservation, everything may legitimately be regarded as required for self-preservation: everything is by nature just.<sup>24</sup> We may speak of a natural right of folly. Furthermore, if everyone is by nature the judge of what is conducive to his self-preservation, consent takes precedence over wisdom. But consent is not effective if it does not transform itself into subjection to the sovereign. For the reason indicated, the sovereign is sovereign not because of his wisdom but because he has been made sovereign by the fundamental compact. This leads to the further conclusion that command or will, and not deliberation or reasoning, is the core of sovereignty or that laws are laws by virtue, not of truth or reasonableness, but of authority alone.<sup>25</sup> In Hobbes's teaching, the supremacy of authority as distinguished from reason follows from an extraordinary extension of the natural right of the individual.

The attempt to deduce the natural law or the moral law from the natural right of self-preservation or from the inescapable power of the fear of violent death led to far-reaching modifications of the content of the moral law. The modification amounted, in the first place, to a considerable simplification. Sixteenth- and seventeenth-century thought in general tended toward a simplification of moral doctrine. To say the least, that tendency easily lent itself to absorption in the broader concern with the guaranty for the actualization of the right social order. One tried to replace the "unsystematic" multiplicity of irreducible virtues by a single virtue, or by a single basic virtue from which all other virtues could be deduced. There existed two well-paved ways in which this re-

24. *De cive*, I, 9; III, 13; *Leviathan*, chaps. xv (100) and xlvi (448).

25. *De cive*, VI, 19; XIV, 1 and 17; *Leviathan*, chap. xxvi (180); cf. also Sir Robert Filmer, *Observations concerning the Original of Government*, Preface.



duction could be achieved. In the moral teaching of Aristotle, "whose opinions are at this day, and in these parts of greater authority than any other human writings" (Hobbes), there occur two virtues which comprise all other virtues or, as we may say, two "general" virtues: magnanimity, which comprises all other virtues in so far as they contribute to the excellence of the individual, and justice, which comprises all other virtues in so far as they contribute to man's serving others. Accordingly, one could simplify moral philosophy by reducing morality either to magnanimity or else to justice. The first was done by Descartes, the second by Hobbes. The latter's choice had the particular advantage that it was favorable to a further simplification of moral doctrine: the unqualified identification of the doctrine of virtues with the doctrine of the moral or natural law. The moral law, in its turn, was to be greatly simplified by being deduced from the natural right of self-preservation. Self-preservation requires peace. The moral law became, therefore, the sum of rules which have to be obeyed if there is to be peace. Just as Machiavelli reduced virtue to the political virtue of patriotism, Hobbes reduced virtue to the social virtue of peaceableness. Those forms of human excellence which have no direct or unambiguous relation to peaceableness—courage, temperance, magnanimity, liberality, to say nothing of wisdom—cease to be virtues in the strict sense. Justice (in conjunction with equity and charity) does remain a virtue, but its meaning undergoes a radical change. If the only unconditional moral fact is the natural right of each to his self-preservation, and therefore all obligations to others arise from contract, justice becomes identical with the habit of fulfilling one's contracts. Justice no longer consists in complying with standards that are independent of human will. All material principles of justice—the rules of commutative and distributive justice or of the Second Table of the Decalogue—cease to have intrinsic validity. All material obligations arise



from the agreement of the contractors, and therefore in practice from the will of the sovereign.<sup>26</sup> For the contract that makes possible all other contracts is the social contract or the contract of subjection to the sovereign.

If virtue is identified with peaceableness, vice will become identical with that habit or that passion which is per se incompatible with peace because it essentially and, as it were, of set purpose issues in offending others; vice becomes identical for all practical purposes with pride or vanity or *amour-propre* rather than with dissoluteness or weakness of the soul. In other words, if virtue is reduced to social virtue or to benevolence or kindness or "the liberal virtues," "the severe virtues" of self-restraint will lose their standing.<sup>27</sup> Here again we must have recourse to Burke's analysis of the spirit of the French Revolution; for Burke's polemical overstatements were and are indispensable for tearing away the disguises, both intentional and unintentional, in which "the new morality" introduced itself: "The Parisian philosophers . . . explode or render odious or contemptible, that class of virtues which restrain the appetite. . . . In the place of all this, they substitute a virtue which they call humanity or benevolence."<sup>28</sup> This substitution is the core of what we have called "political hedonism."

To establish the meaning of political hedonism in somewhat more precise terms, we must contrast Hobbes's teaching with the nonpolitical hedonism of Epicurus. The points in which Hobbes could agree with Epicurus, were these: the good is fundamentally identical with the pleasant; virtue is therefore not choiceworthy for its own sake but only with a view to the

26. *Elements*, I, 17, sec. 1; *De cive*, Ep. ded.; III, 3-6, 29, 32; VI, 16; XII, 1; XIV, 9-10, 17; XVII, 10; XVIII, 3; *De homine*, XIII, 9; *Leviathan*, chaps. xiv (92), xv (96, 97, 98, 104), and xxvi (186).

27. "Temperantia privatio potius vitiorum quae oriuntur ab ingeniis cupidis (quibus non laeditur civitas, sed ipsi) quam virtus moralis (est)" (*De homine*, XIII, 9). The step from this view to "private vices, public benefits," is short.

28. Letter to Rivarol of June 1, 1791.



attainment of pleasure or the avoidance of pain; the desire for honor and glory is utterly vain, i.e., sensual pleasures are, as such, preferable to honor or glory. Hobbes had to oppose Epicurus in two crucial points in order to make possible political hedonism. In the first place, he had to reject Epicurus' implicit denial of a state of nature in the strict sense, i.e., of a prepolitical condition of life in which man enjoys natural rights; for Hobbes agreed with the idealistic tradition in thinking that the claim of civil society stands or falls with the existence of natural right. Besides, he could not accept the implication of Epicurus' distinction between natural desires which are necessary and natural desires which are not necessary; for that distinction implied that happiness requires an "ascetic" style of life and that happiness consists in a state of repose. Epicurus' high demands on self-restraint were bound to be utopian as far as most men are concerned; they had therefore to be discarded by a "realistic" political teaching. The "realistic" approach to politics forced Hobbes to lift all restrictions on the striving for unnecessary sensual pleasures or, more precisely, for the *commoda hujus vitae*, or for power, with the exception of those restrictions that are required for the sake of peace. Since, as Epicurus said, "Nature has made [only] the necessary things easy to supply," the emancipation of the desire for comfort required that science be put into the service of the satisfaction of that desire. It required, above all, that the function of civil society be radically redefined: "the good life," for the sake of which men enter civil society, is no longer the life of human excellence but "commodious living" as the reward of hard work. And the sacred duty of the rulers is no longer "to make the citizens good and doers of noble things" but to "study, as much as by laws can be effected, to furnish the citizens abundantly with all good things . . . which are conducive to delectation."<sup>29</sup>

29. *De cive*, I, 2, 5, 7; XIII, 4-6; *Leviathan*, chaps. xi (63-64) and xiii end; *De corpore*, I, 6.



It is not necessary for our purpose to follow Hobbes's thought on its way from the natural right of everyone, or from the state of nature, to the establishment of civil society. This part of his doctrine is not meant to be more than the strict consequence from his premises. It culminates in the doctrine of sovereignty, of which he is generally recognized to be the classic exponent. The doctrine of sovereignty is a legal doctrine. Its gist is not that it is expedient to assign plenitude of power to the ruling authority but that that plenitude belongs to the ruling authority as of right. The rights of sovereignty are assigned to the supreme power on the basis not of positive law or of general custom but of natural law. The doctrine of sovereignty formulates natural public law.<sup>30</sup> Natural public law—*jus publicum universale seu naturale*—is a new discipline that emerged in the seventeenth century. It emerged in consequence of that radical change of orientation which we are trying to understand. Natural public law represents one of the two characteristically modern forms of political philosophy, the other form being "politics" in the sense of Machiavellian "reason of state." Both are fundamentally distinguished from classical political philosophy. In spite of their opposition to each other, they are motivated by fundamen-

30. *Leviathan*, chap. xxx, the third and fourth paragraphs of the Latin version; *De cive*, IX, 3; X, 2 beginning, and 5; XI, 4 end; XII, 8 end; XIV, 4; cf. also Malebranche, *Traité de morale*, ed. Joly, p. 214. There is this difference between natural law in the ordinary sense and natural public law, that natural public law and its subject matter (the commonwealth) are based on a fundamental fiction, on the fiction that the will of the sovereign is the will of all and of each or that the sovereign represents all and each (*De cive*, V, 6, 9, 11; VII, 14). The will of the sovereign has to be *regarded* as the will of all and of each, whereas, in fact, there is an essential discrepancy between the will of the sovereign and the wills of the individuals, the only wills that are natural: to obey the sovereign means precisely to do what the sovereign wills, not what I will. Even if my reason should habitually tell me to will what the sovereign wills, this rational will is not necessarily identical with my complete will, my actual or explicit will (cf. the reference to the "implicit wills" in *Elements*, II, 9, sec. 1; cf. also *De cive*, XII, 2). On the basis of Hobbes's premises, "representation" is then not a convenience but an essential necessity.



tally the same spirit.<sup>31</sup> Their origin is the concern with a right or sound order of society whose actualization is probable, if not certain, or does not depend on chance. Accordingly, they deliberately lower the goal of politics; they are no longer concerned with having a clear view of the highest political possibility with regard to which all actual political orders can be judged in a responsible manner. The "reason of state" school replaced "the best regime" by "efficient government." The "natural public law" school replaced "the best regime" by "legitimate government."

Classical political philosophy had recognized the difference between the best regime and legitimate regimes. It asserted, therefore, a variety of types of legitimate regimes; that is, what type of regime is legitimate in given circumstances depends on the circumstances. Natural public law, on the other hand, is concerned with that right social order whose actualization is possible under all circumstances. It therefore tries to delineate that social order that can claim to be legitimate or just in all cases, regardless of the circumstances. Natural public law, we may say, replaces the idea of the best regime, which does not supply, and is not meant to supply, an answer to the question of what is the just order here and now, by the idea of the just social order which answers the basic practical question once and for all, i.e., regardless of place and time.<sup>32</sup>

31. Cf. Fr. J. Stahl, *Geschichte der Rechtsphilosophie* (2d ed.), p. 325: "Es ist eine Eigentümlichkeit der neuern Zeit, dass ihre Staatslehre (das Naturrecht) und ihre Staatskunst (die vorzugsweise sogenannte Politik) zwei völlig verschiedene Wissenschaften sind. Diese Trennung ist das Werk des Geistes, welcher in dieser Periode die Wissenschaft beherrscht. Das Ethos wird in der Vernunft gesucht, diese hat aber keine Macht über die Begebenheiten und den natürlichen Erfolg; was die äusserlichen Verhältnisse fordern und abnöthigen, stimmt gar nicht mit ihr überein, verhält sich feindlich gegen sie, die Rücksicht auf dasselbe kann daher nicht Sache der Ethik des Staates sein." Cf. Grotius *De jure belli*, Prolegomena, sec. 57.

32. Cf. *De cive*, praef. toward the end, on the entirely different status of the question of the best form of government, on the one hand, and the question of the rights of the sovereign, on the other.



Natural public law intends to give such a universally valid solution to the political problem as is meant to be universally applicable in practice. In other words, whereas, according to the classics, political theory proper is essentially in need of being supplemented by the practical wisdom of the statesman on the spot, the new type of political theory solves, as such, the crucial practical problem: the problem of what order is just here and now. In the decisive respect, then, there is no longer any need for statesmanship as distinguished from political theory. We may call this type of thinking "doctrinairism," and we shall say that doctrinairism made its first appearance within political philosophy—for lawyers are altogether in a class by themselves—in the seventeenth century. At that time the sensible flexibility of classical political philosophy gave way to fanatical rigidity. The political philosopher became more and more indistinguishable from the partisan. The historical thought of the nineteenth century tried to recover for statesmanship that latitude which natural public law had so severely restricted. But since that historical thought was absolutely under the spell of modern "realism," it succeeded in destroying natural public law only by destroying in the process all moral principles of politics.

As regards Hobbes's teaching on sovereignty in particular, its doctrinaire character is shown most clearly by the denials which it implies. It implies the denial of the possibility of distinguishing between good and bad regimes (kingship and tyranny, aristocracy and oligarchy, democracy and ochlocracy) as well as of the possibility of mixed regimes and of "rule of law."<sup>33</sup> Since these denials are at variance with observed facts, the doctrine of sovereignty amounts in practice

33. *De cive*, VII, 2-4; XII, 4-5; *Leviathan*, chap. xxix (216). See, however, the reference to legitimate kings and to illegitimate rulers in *De cive*, XII, 1 and 3. *De cive*, VI, 13 end, and VII, 14, show that natural law, as Hobbes understands it, supplies a basis for objectively distinguishing between kingship and tyranny. Cf. also *ibid.*, XII, 7, with XIII, 10.



to a denial not of the existence, but of the legitimacy, of the possibilities mentioned: Hobbes's doctrine of sovereignty ascribes to the sovereign prince or to the sovereign people an unqualified right to disregard all legal and constitutional limitations according to their pleasure,<sup>34</sup> and it imposes even on sensible men a natural law prohibition against censuring the sovereign and his actions. But it would be wrong to overlook the fact that the basic deficiency of the doctrine of sovereignty is shared, if to different degrees, by all other forms of natural public law doctrines as well. We merely have to remind ourselves of the practical meaning of the doctrine that the only legitimate regime is democracy.

The classics had conceived of regimes (*politeiai*) not so much in terms of institutions as in terms of the aims actually pursued by the community or its authoritative part. Accordingly, they regarded the best regime as that regime whose aim is virtue, and they held that the right kind of institutions are indeed indispensable for establishing and securing the rule of the virtuous, but of only secondary importance in comparison with "education," i.e., the formation of character. From the point of view of natural public law, on the other hand, what is needed in order to establish the right social order is not so much the formation of character as the devising of the right kind of institutions. As Kant put it in rejecting the view that the establishment of the right social order requires a nation of angels: "Hard as it may sound, the problem of establishing the state [i.e., the just social order] is soluble even for a nation of devils, provided they have sense," i.e., provided that they are guided by enlightened selfishness; the fundamental political problem is simply one of "a good organization of the state, of

34. As for the discrepancy between Hobbes's doctrine and the practice of mankind, see *Leviathan*, chaps. xx end, and xxxi end. As for the revolutionary consequences of Hobbes's doctrine of sovereignty, see *De cive*, VII, 16 and 17, as well as *Leviathan*, chaps. xix (122) and xxix (210): there is no right of prescription; the sovereign is the present sovereign (see *Leviathan*, chap. xxvi [175]).



which man is indeed capable." In the words of Hobbes, "when [commonwealths] come to be dissolved, not by external violence, but intestine disorder, the fault is not in men, as they are the *matter*, but as they are the *makers*, and orderers of them."<sup>35</sup> Man as the maker of civil society can solve once and for all the problem inherent in man as the matter of civil society. Man can guarantee the actualization of the right social order because he is able to conquer human nature by understanding and manipulating the mechanism of the passions.

There is a term that expresses in the most condensed form the result of the change which Hobbes has effected. That term is "power." It is in Hobbes's political doctrine that power becomes for the first time *eo nomine* a central theme. Considering the fact that, according to Hobbes, science as such exists for the sake of power, one may call Hobbes's whole philosophy the first philosophy of power. "Power" is an ambiguous term. It stands for *potentia*, on the one hand, and for *potestas* (or *jus* or *dominium*), on the other.<sup>36</sup> It means both "physical" power and "legal" power. The ambiguity is essential: only if *potentia* and *potestas* essentially belong together, can there be a guaranty of the actualization of the right social order. The state, as such, is both the greatest human force and the highest human authority. Legal power is irresistible force.<sup>37</sup> The necessary coincidence of the greatest human force and the highest human authority corresponds strictly to the necessary coincidence of the most powerful passion (fear of violent death) and

35. *Leviathan*, chap. xxix (210); Kant, *Eternal Peace*, Definitive Articles, First Addition.

36. Cf., e.g., the headings of chap. x in the English and Latin versions of the *Leviathan*, and the headings of *Elements*, II, 3 and 4, with those of *De cive*, VIII and IX. For an example of the synonymous use of *potentia* and *potestas* see *De cive*, IX, 8. A comparison of the title of the *Leviathan* with the Preface of *De cive* (beginning of the section on method) suggests that "power" is identical with "generation." Cf. *De corpore*, X, 1: *potentia* is the same as *causa*. In opposition to Bishop Bramhall, Hobbes insists on the identity of "power" with "potentiality" (*English Works*, IV, 298).

37. *De cive*, XIV, 1, and XVI, 15; *Leviathan*, chap. x (56).



the most sacred right (the right of self-preservation). *Potentia* and *potestas* have this in common, that they are both intelligible only in contradistinction, and in relation, to the *actus*: the *potentia* of a man is what a man *can* do, and the *potestas* or, more generally expressed, the right of a man, is what a man *may* do. The predominance of the concern with "power" is therefore only the reverse of a relative indifference to the *actus*, and this means to the purposes for which man's "physical" as well as his "legal" power is or ought to be used. This indifference can be traced directly to Hobbes's concern with an exact or scientific political teaching. The sound use of "physical" power as well as the sound exercise of rights depends on *prudentia*, and whatever falls within the province of *prudentia* is not susceptible of exactness. There are two kinds of exactness: mathematical and legal. From the point of view of mathematical exactness, the study of the *actus* and therewith of the ends is replaced by the study of *potentia*. "Physical" power as distinguished from the purposes for which it is used is morally neutral and therefore more amenable to mathematical strictness than is its use: power can be measured. This explains why Nietzsche, who went much beyond Hobbes and declared the will to power to be the essence of reality, conceived of power in terms of "quanta of power." From the point of view of legal exactness, the study of the ends is replaced by the study of *potestas*. The rights of the sovereign, as distinguished from the exercise of these rights, permit of an exact definition without any regard to any unforeseeable circumstances, and this kind of exactness is again inseparable from moral neutrality: right declares what is permitted, as distinguished from what is honorable.<sup>38</sup> Power, as distinguished from the end for which

38. *De cive*, X, 16, and VI, 13 annot. end. Cf. *Leviathan*, chap. xxi (143), for the distinction between the permitted and the honorable (cf. Salmasius, *Defensio regia* [1649], pp. 40-45). Cf. *Leviathan*, chap. xi (64) with Thomas Aquinas *Summa contra Gentiles* iii. 31.



power is used or ought to be used, becomes the central theme of political reflections by virtue of that limitation of horizon which is needed if there is to be a guaranty of the actualization of the right social order.

Hobbes's political doctrine is meant to be universally applicable and hence to be applicable also and especially in extreme cases. This indeed may be said to be the boast of the classic doctrine of sovereignty: that it gives its due to the extreme case, to what holds good in emergency situations, whereas those who question that doctrine are accused of not looking beyond the pale of normality. Accordingly, Hobbes built his whole moral and political doctrine on observations regarding the extreme case; for the experience on which his doctrine of the state of nature is based is the experience of civil war. It is in the extreme situation, when the social fabric has completely broken down, that there comes to sight the solid foundation on which every social order must ultimately rest: the fear of violent death, which is the strongest force in human life. Yet Hobbes was forced to concede that the fear of violent death is only "commonly" or in most cases the most powerful force. The principle which was supposed to make possible a political doctrine of universal applicability, then, is not universally valid and therefore is useless in what, from Hobbes's point of view, is the most important case—the extreme case. For how can one exclude the possibility that precisely in the extreme situation the exception will prevail?<sup>39</sup>

39. *Leviathan*, chaps. xiii (83) and xv (92). One may state this difficulty also as follows: In the spirit of the dogmatism based on skepticism, Hobbes identified what the skeptic Carneades apparently regarded as the conclusive refutation of the claims raised on behalf of justice, with the only possible justification of these claims: the extreme situation—the situation of the two shipwrecked men on a plank on which only one man can save himself—reveals, not the impossibility of justice, but the basis of justice. Yet Carneades did not contend that in such a situation one is compelled to kill one's competitor (Cicero *Republic* iii. 29–30): the extreme situation does not reveal a real necessity.



To speak in more specific terms, there are two politically important phenomena which would seem to show with particular clarity the limited validity of Hobbes's contention regarding the overwhelming power of the fear of violent death. In the first place, if the only unconditional moral fact is the individual's right of self-preservation, civil society can hardly demand from the individual that he resign that right both by going to war and by submitting to capital punishment. As regards capital punishment, Hobbes was consistent enough to grant that, by being justly and legally condemned to death, a man does not lose the right to defend his life by resisting "those that assault him": a justly condemned murderer retains—nay, he acquires—the right to kill his guards and everyone else who stands in his way to escape, in order to save dear life.<sup>40</sup> But, by granting this, Hobbes in fact admitted that there exists an insoluble conflict between the rights of the government and the natural right of the individual to self-preservation. This conflict was solved in the spirit, if against the letter, of Hobbes by Beccaria, who inferred from the absolute primacy of the right of self-preservation the necessity of abolishing capital punishment. As regards war, Hobbes, who proudly declared that he was "the first of all that fled" at the outbreak of the Civil War, was consistent enough to grant that "there is allowance to be made for natural timorousness." And as if he desired to make it perfectly clear to what lengths he was prepared to go in opposing the lupine spirit of Rome, he continues as follows: "When armies fight, there is on one side, or both, a running away: yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably."<sup>41</sup> But, by granting this, he destroyed the moral basis of national defense. The only solution to this difficulty which

40. *Leviathan*, chap. xxi (142-43); cf. also *De cive*, VIII, 9.

41. *Leviathan*, chap. xxi (143); *English Works*, IV, 414. Cf. *Leviathan*, chap. xxx (227) and *De cive*, XIII, 14, with Locke's chapter on conquest.



preserves the spirit of Hobbes's political philosophy is the outlawry of war or the establishment of a world state.

There was only one fundamental objection to Hobbes's basic assumption which he felt very keenly and which he made every effort to overcome. In many cases the fear of violent death proved to be a weaker force than the fear of hell fire or the fear of God. The difficulty is well illustrated by two widely separated passages of the *Leviathan*. In the first passage Hobbes says that the fear of the power of men (i.e., the fear of violent death) is "commonly" greater than the fear of the power of "spirits invisible," i.e., than religion. In the second passage he says that "the fear of darkness and ghosts is greater than other fears."<sup>42</sup> Hobbes saw his way to solve this contradiction: the fear of invisible powers is stronger than the fear of violent death as long as people believe in invisible powers, i.e., as long as they are under the spell of delusions about the true character of reality; the fear of violent death comes fully into its own as soon as people have become enlightened. This implies that the whole scheme suggested by Hobbes requires for its operation the weakening or, rather, the elimination of the fear of invisible powers. It requires such a radical change of orientation as can be brought about only by the disenchantment of the world, by the diffusion of scientific knowledge, or by popular enlightenment. Hobbes's is the first doctrine that necessarily and unmistakably points to a thoroughly "enlightened," i.e., a-religious or atheistic society as the solution of the social or political problem. This most important implication of Hobbes's doctrine was made explicit not many years after his death by Pierre Bayle, who attempted to prove that an atheistic society is possible.<sup>43</sup>

42. *Leviathan*, chaps. xiv (92) and xxix (215); cf. also *ibid.*, chap. xxxviii beginning; *De cive*, VI, 11; XII, 2, 5; XVII, 25 and 27.

43. A good reason for connecting Bayle's famous thesis with Hobbes's doctrine rather than with that of Faustus Socinus, e.g., is supplied by the following statement



It is, then, only through the prospect of popular enlightenment that Hobbes's doctrine acquired such consistency as it possesses. The virtues which he ascribed to enlightenment are indeed extraordinary. The power of ambition and avarice, he says, rests on the false opinions of the vulgar regarding right and wrong; therefore, once the principles of justice are known with mathematical certainty, ambition and avarice will become powerless and the human race will enjoy lasting peace. For, obviously, mathematical knowledge of the principles of justice (i.e., the new doctrine of natural right and the new natural public law that is built on it) cannot destroy the wrong opinions of the vulgar, if the vulgar are not apprised of the results of that mathematical knowledge. Plato had said that evils will not cease from the cities if the philosophers do not become kings or if philosophy and political power do not coincide. He had expected such salvation for mortal nature as can reasonably be expected, from a coincidence over which

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of Bayle (*Dictionnaire*, art. "Hobbes," rem. D): "Hobbes se fit beaucoup d'ennemis par cet ouvrage [*De cive*]; mais il fit avouer aux plus clairvoyants, qu'on n'avait jamais si bien pénétré les fondements de la politique." I cannot prove here that Hobbes was an atheist, even according to his own view of atheism. I must limit myself to asking the reader to compare *De cive*, XV, 14, with *English Works*, IV, 349. Many present-day scholars who write on subjects of this kind do not seem to have a sufficient notion of the degree of circumspection or of accommodation to the accepted views that was required, in former ages, of "deviationists" who desired to survive or to die in peace. Those scholars tacitly assume that the pages in Hobbes's writings devoted to religious subjects can be understood if they are read in the way in which one ought to read the corresponding utterances, say, of Lord Bertrand Russell. In other words, I am familiar with the fact that there are innumerable passages in Hobbes's writings which were used by Hobbes and which can be used by everyone else for proving that Hobbes was a theist and even a good Anglican. The prevalent procedure would merely lead to historical errors, if to grave historical errors, but for the fact that its results are employed for buttressing the dogma that the mind of the individual is incapable of liberating itself from the opinions which rule his society. Hobbes's last word on the question of public worship is that the commonwealth *may* establish public worship. If the commonwealth fails to establish public worship, i.e., if it allows "many sorts of worship," as it may, "it cannot be said . . . that the commonwealth is of any religion at all" (cf. *Leviathan*, chap. xxxi [240] with the Latin version [p.m. 171]).



philosophy has no control but for which one can only wish or pray. Hobbes, on the other hand, was certain that philosophy itself can bring about the coincidence of philosophy and political power by becoming popularized philosophy and thus public opinion. Chance will be conquered by systematic philosophy issuing in systematic enlightenment: *Paulatim eruditur vulgus*.<sup>44</sup> By devising the right kind of institutions and by enlightening the citizen body, philosophy guarantees the solution of the social problem, whose solution cannot be guaranteed by man if it is thought to depend on moral discipline.

Opposing the "utopianism" of the classics, Hobbes was concerned with a social order whose actualization is probable and even certain. The guaranty of its actualization might seem to be supplied by the fact that the sound social order is based on the most powerful passion and therewith on the most powerful force in man. But if the fear of violent death is truly the strongest force in man, one should expect the desired social order always, or almost always, to be in existence, because it will be produced by natural necessity, by the natural order. Hobbes overcomes this difficulty by assuming that men in their stupidity interfere with the natural order. The right social order does not normally come about by natural necessity on account of man's ignorance of that order. The "invisible

44. *De cive*, Ep. ded.; cf. *De corpore*, I, 7: the cause of civil war is ignorance of the causes of wars and of peace; hence the remedy is moral philosophy. Accordingly Hobbes, characteristically deviating from Aristotle (*Politics* 1302<sup>a</sup>35 ff.), seeks the causes of rebellion chiefly in false doctrines (*De cive*, XII). The belief in the prospects of popular enlightenment—*De homine*, XIV, 13; *Leviathan*, chaps. xviii (119), xxx (221, 224–25), and xxxi end—is based on the view that the natural inequality of human beings in regard to intellectual gifts is inconsiderable (*Leviathan*, chaps. xiii [80] and xv [100]; *De cive*, III, 13). Hobbes's expectation from enlightenment seems to be contradicted by his belief in the power of passion, and especially of pride or ambition. The contradiction is solved by the consideration that the ambition which endangers civil society is characteristic of a minority: of "the rich and potent subjects of a kingdom, or those that are accounted the most learned"; if "the common people," whom necessity "keepeth attent on their trades, and labour," are properly taught, the ambition and avarice of the few will become powerless. Cf. also *English Works*, IV, 443–44.



hand" remains ineffectual if it is not supported by the *Leviathan* or, if you wish, by the *Wealth of Nations*.

There is a remarkable parallelism and an even more remarkable discrepancy between Hobbes's theoretical philosophy and his practical philosophy. In both parts of his philosophy, he teaches that reason is impotent and that it is omnipotent, or that reason is omnipotent because it is impotent. Reason is impotent because reason or humanity have no cosmic support: the universe is unintelligible, and nature "dissociates" men. But the very fact that the universe is unintelligible permits reason to rest satisfied with its free constructs, to establish through its constructs an Archimedean basis of operations, and to anticipate an unlimited progress in its conquest of nature. Reason is impotent against passion, but it can become omnipotent if it co-operates with the strongest passion or if it puts itself into the service of the strongest passion. Hobbes's rationalism, then, rests ultimately on the conviction that, thanks to nature's kindness, the strongest passion is the only passion which can be "the origin of large and lasting societies" or that the strongest passion is the most rational passion. In the case of human things, the foundation is not a free construct but the most powerful natural force in man. In the case of human things, we understand not merely what we make but also what makes our making and our makings. Whereas the philosophy or science of nature remains fundamentally hypothetical, political philosophy rests on a nonhypothetical knowledge of the nature of man.<sup>45</sup> As long as Hobbes's approach prevails, "the philosophy concerned with the human things" will remain the last refuge of nature. For at some point nature succeeds in getting a hearing. The modern contention that man can "change the world" or "push back nature" is not unreasonable. One can even safely go much beyond it and say that man can expel nature with a hayfork. One ceases

45. Cf. n. 9 above.



to be reasonable only if one forgets what the philosophic poet adds, *tamen usque recurret*.

#### B. LOCKE

At first glance Locke seems to reject altogether Hobbes's notion of natural law and to follow the traditional teaching. He certainly speaks of man's natural rights as if they were derivative from the law of nature, and he accordingly speaks of the law of nature as if it were a law in the strict sense of the term. The law of nature imposes perfect duties on man as man, regardless of whether he lives in the state of nature or in civil society. "The law of nature stands as an eternal rule to all men," for it is "plain and intelligible to all rational creatures." It is identical with "the law of reason." It is "knowable by the light of nature; that is, without the help of positive revelation." Locke considers it entirely possible for the law of nature or the moral law to be raised to the rank of a demonstrative science. That science would make out "from self-evident propositions, by necessary consequences . . . the measures of right and wrong." Man would thus become able to elaborate "a body of ethics, proved to be the law of nature, from principles of reason, and teaching all the duties of life," or "the entire body of the 'law of nature,'" or "complete morality," or a "code" which gives us the law of nature "entire." That code would contain, among other things, the natural penal law.<sup>46</sup> Yet Locke never made a serious effort to elaborate that code. His failure to embark on this great enterprise was due to the problem posed by theology.<sup>47</sup>

The law of nature is a declaration of the will of God. It is "the voice of God" in man. It can therefore be called the "law

46. *Treatises of Government*, I, secs. 86, 101; II, secs. 6, 12, 30, 96, 118, 124, 135. *An Essay concerning Human Understanding*, I, 3, sec. 13, and IV, 3, sec. 18. *The Reasonableness of Christianity* (*The Works of John Locke in Nine Volumes*, VI [London, 1824], 140-42).

47. Cf. Descartes's "Auctor non libenter scribit ethica" (*Œuvres*, ed. Adam-Tannery, V, 178).



of God" or "divine law" or even the "eternal law"; it is "the highest law." It is the law of God not only in fact. It must be known to be the law of God in order to be law. Without such knowledge man cannot act morally. For "the true ground of morality . . . can only be the will and law of a God." The law of nature can be demonstrated because the existence and the attributes of God can be demonstrated. This divine law is promulgated, not only in or by reason, but by revelation as well. In fact, it first became known to man in its entirety by revelation, but reason confirms this divine law thus revealed. This does not mean that God did not reveal to man some laws which are purely positive: the distinction between the law of reason, which obliges man as man, and the law revealed in the gospel, which obliges Christians, is preserved by Locke.<sup>48</sup>

One may wonder whether what Locke says about the relation between the law of nature and the revealed law is free from difficulties. However this may be, his teaching is exposed to a more fundamental and more obvious difficulty, to a difficulty which seems to endanger the very notion of a law of nature. He says, on the one hand, that, in order to be a law, the law of nature must not only have been given by God and be known to have been given by God, but it must in addition have as its sanctions divine "rewards and punishments, of infinite weight and duration, in another life." On the other hand, however, he says that reason cannot demonstrate that there is another life. Only through revelation do we know of the sanctions for the law of nature or of "the only true touchstone of moral rectitude." Natural reason is therefore unable

48. *Treatises*, I, secs. 39, 56, 59, 63, 86, 88, 89, 111, 124, 126, 128, 166; II, secs. 1, 4, 6, 25, 52, 135, 136 n., 142, 195; *Essay*, I, 3, secs. 6 and 13; II, 28, sec. 8; IV, 3, sec. 18, and 10, sec. 7; *Reasonableness*, pp. 13, 115, 140, 144 ("the highest law, the law of nature"), 145; *A Second Vindication of the Reasonableness of Christianity* (*Works*, VI, 229): "As men, we have God for our king, and are under the law of reason: as Christians, we have Jesus the Messiah for our king, and are under the law revealed by him in the gospel. And though every Christian, both as a deist and a Christian, be obliged to study both the law of nature and the revealed law. . . ." Cf. n. 51 below.



to know the law of nature as a law.<sup>49</sup> This would mean that there does not exist a law of nature in the strict sense.

This difficulty is apparently overcome by the fact that "the veracity of God is a demonstration of the truth of what he has revealed."<sup>50</sup> That is to say, natural reason is indeed unable to demonstrate that the souls of men shall live forever. But natural reason is able to demonstrate that the New Testament is the perfect document of revelation. And since the New Testament teaches that the souls of men shall live forever, natural reason is able to demonstrate the true ground of morality and therewith to establish the dignity of the law of nature as a true law.

By demonstrating that the New Testament is a document of revelation, one demonstrates that the law promulgated by Jesus is a law in the proper sense of the term. This divine law

49. *Essay*, I, 3, secs. 5, 6, 13; II, 28, sec. 8; IV, 3, sec. 29; *Reasonableness*, p. 144: "But where was it that their obligation [the obligation of the just measures of right and wrong] was thoroughly known and allowed, and they received as precepts of a *law*; of the highest law, the law of nature? That *could not be*, without a clear knowledge and acknowledgment of the law-maker, and the great rewards and punishments, for those that would, or would not obey him." *Ibid.*, pp. 150-51: "The view of heaven and hell will cast a slight upon the short pleasures of this present state, and give attractions and encouragements to virtue which reason and interest, and the care of ourselves, cannot but allow and prefer. Upon this foundation, and upon this *only*, morality stands firm, and may defy all competition." *Second Reply to the Bishop of Worcester* (*Works*, III, 489; see also 474 and 480): "So unmovable is that truth delivered by the Spirit of truth, that though the light of nature gave some obscure glimmering, some uncertain hopes of a future state, yet human reason could attain to no clearness, no certainty about it, but that it was Jesus Christ alone who had 'brought life and immortality to light through the gospel' . . . this article of revelation, which . . . the Scripture assures us is established and made certain *only* by revelation." (The italics are not in the original.)

50. *Second Reply to the Bishop of Worcester*, p. 476. Cf. *ibid.*, p. 281: "I think it is possible to be certain upon the testimony of God . . . where I know that it is the testimony of God; because in such a case, that testimony is capable not only to make me believe, but, if I consider it right, to make me know the thing to be so; and so I may be certain. For the veracity of God is as capable of making me know a proposition to be true, as any other way of proof can be, and therefore I do not in such a case barely believe, but know such a proposition to be true, and attain certainty." See also *Essay*, IV, 16, sec. 14.



proves to be in full conformity with reason; it proves to be the absolutely comprehensive and perfect formulation of the law of nature. One is thus led to see that unassisted reason would have been unable to discover the law of nature in its entirety, but that the reason which has learned from revelation can recognize the thoroughly reasonable character of the law revealed in the New Testament. A comparison of the New Testament teaching with all other moral teachings shows that the entire law of nature is available in the New Testament, and only in the New Testament. The entire law of nature is available only in the New Testament, and it is there available in perfect clarity and plainness.<sup>51</sup>

If "the surest, the safest and most effectual way of teaching" the entire law of nature, and hence any part of it, is supplied by "the inspired books"; the complete and perfectly clear natural law teaching concerning government in particular would consist of properly arranged quotations from Scripture and especially from the New Testament. Accordingly, one would expect that Locke would have written a "*Politique tirée des propres paroles de l'Écriture Sainte*." But, in fact, he wrote his *Two Treatises of Government*. What he did stands in striking

51. *Reasonableness*, p. 139: "It should seem, by the little that has hitherto been done in it, that it is too hard a task for unassisted reason to establish morality in all its parts, upon its true foundation, with a clear and convincing light." *Ibid.*, pp. 142-43: "It is true, there is a law of nature: but who is there who ever did, or undertook to give it us all entire, as a law; *no more, nor no less*, than what was contained in, and had the obligation of that law? Who ever made out all the parts of it, put them together, and showed the world their obligation? Where was there any such code, that mankind might have recourse to, as their unerring rule, before our Saviour's time? . . . Such a law of morality Jesus Christ hath given us in the New Testament . . . by revelation. We have from him a full and sufficient rule for our direction, and conformable to that of reason." *Ibid.*, p. 147: "And then there needs no more, but to read the inspired books, to be instructed: all the duties of morality lie there clear, and plain, and easy to be understood. And here I appeal, whether this be not the surest, the safest, and most effectual way of teaching: especially, if we add this further consideration, that as it suits the lowest capacities of reasonable creatures, so it reaches and satisfies, nay, enlightens the highest." (The italics are not in the original.)



contrast to what he said. He himself "always thought the actions of men the best interpreters of their thoughts."<sup>52</sup> If we apply this rule to what was perhaps his greatest action, we are forced to suspect that he encountered some hidden obstacles on his way toward a strictly scriptural natural law teaching regarding government. He might have become aware of difficulties obstructing either the demonstration of the revealed character of Scripture or the equation of the New Testament law with the law of nature or both.

Locke would not have dwelt on these difficulties. He was a cautious writer. The fact that he is generally known as a cautious writer shows, however, that his caution is obtrusive, and therefore perhaps not what is ordinarily understood by caution. At any rate, the scholars who note that Locke was cautious do not always consider that the term "caution" designates a variety of phenomena and that the only authentic interpreter of Locke's caution is Locke himself. In particular, present-day scholars do not consider the possibility that procedures which they, from their point of view, justly regard as verging on the unseemly might have been regarded in other ages, and by men of another type, as entirely unobjectionable.

Caution is a kind of noble fear. "Caution" means something different when applied to theory than when applied to practice or politics. A theoretician will not be called cautious if he does not make clear in each case the value of the various arguments which he employs or if he suppresses any relevant fact. A man of affairs who is cautious in this sense would be blamed as lacking in caution. There may be extremely relevant facts which, if stressed, would inflame popular passion and thus prevent the wise handling of those very facts. A cautious political writer would state the case for the good cause in a manner which could be expected to create general good will toward the good cause. He would avoid the mention of every-

52. *Essay*, I, 3, sec. 3.



thing which would "displace the veil beneath which" the respectable part of society "dissembles its divisions." Whereas the cautious theoretician would scorn the appeal to prejudices, the cautious man of affairs would try to enlist all respectable prejudices in the service of the good cause. "Logic admits of no compromise. The essence of politics is compromise." Acting in this spirit, the statesmen who were responsible for the settlement of 1689 which Locke defended in the *Two Treatises*, "cared little whether their major agreed with their conclusion, if their major secured two hundred votes, and the conclusion two hundred more."<sup>53</sup> Acting in the same spirit, Locke, in his defense of the revolutionary settlement, appealed as frequently as he could to the authority of Hooker—of one of the least revolutionary men who ever lived. He took every advantage of his partial agreement with Hooker. And he avoided the inconveniences which might have been caused by his partial disagreement with Hooker by being practically silent about it. Since to write means to act, he did not proceed in an altogether different manner when composing his most theoretical work, the *Essay*: "since not all, nor the most of those that believe a God, are at the pains, or have the skill, to examine and clearly comprehend the demonstrations of his being, I was unwilling to show the weakness of the argument there spoken of [in *Essay*, IV, 10, sec. 7]; since possibly by it some men might be confirmed in the belief of a God, which is enough to preserve in them true sentiments of religion and morality."<sup>54</sup> Locke was always, as Voltaire liked to call him, "le sage Locke."

Locke has explained his view of caution most fully in some passages of his *Reasonableness of Christianity*. Speaking of the ancient philosophers, he says: "The rational and thinking part of mankind . . . when they sought after him, they found the

53. Macaulay, *The History of England* (New York: Allison, n.d.), II, 491.

54. *Letter to the Bishop of Worcester* (*Works*, III, 53–54).



one supreme, invisible God; but if they acknowledged and worshipped him, it was only in their own minds. They kept this truth locked up in their own breasts as a secret, nor ever durst venture it amongst the people; much less amongst the priests, those wary guardians of their own creeds and profitable inventions." Socrates indeed "opposed and laughed at their polytheism, and wrong opinions of the deity; and we see how they rewarded him for it. Whatsoever Plato, and the soberest of the philosophers, thought of the nature and being of the one God, they were fain, in their outward professions and worship, to go with the herd, and keep to their religion established by law. . . ." It does not appear that Locke regarded the conduct of the ancient philosophers as reprehensible. Still that conduct might be thought to be incompatible with biblical morality. Locke did not think so. When speaking of Jesus' "caution" or "reservedness" or his "concealing himself," he says that Jesus used "words too doubtful to be laid hold on against him" or words "obscure and doubtful, and less liable to be made use of against him," and that he tried "to keep himself out of the reach of any accusation, that might appear just or weighty to the Roman deputy." Jesus "perplexed his meaning," "his circumstances being such, that without such a prudent carriage and reservedness, he could not have gone through with the work which he came to do. . . . He so involved his sense, that it was not easy to understand him." If he had acted differently, both the Jewish and the Roman authorities would "have taken away his life; at least they would have . . . hindered the work he was about." In addition, if he had not been cautious, he would have created "manifest danger of tumult and sedition"; there would have been "room to fear that [his preaching the truth] should cause . . . disturbance in civil societies, and the governments of the world."<sup>55</sup> We see, then, that, according to Locke, cautious

55. *Reasonableness*, pp. 35, 42, 54, 57, 58, 59, 64, 135-36.



speech is legitimate if unqualified frankness would hinder a noble work one is trying to achieve or expose one to persecution or endanger the public peace; and legitimate caution is perfectly compatible with going with the herd in one's outward professions or with using ambiguous language or with so involving one's sense that one cannot easily be understood.

Let us assume for a moment that Locke was a thoroughgoing rationalist, i.e., that he regarded unassisted reason not only as man's "only star and compass"<sup>56</sup> but as sufficient for leading man to happiness, and hence rejected revelation as superfluous and therefore as impossible. Even in that case his principles would hardly have permitted him, given the circumstances in which he wrote, to go beyond contending that he accepted the New Testament teaching as true because its being revealed has been demonstrated and because the rules of conduct which it conveys express in the most perfect manner the entire law of reason. However, to understand why he wrote his *Two Treatises of Government*, and not a "Politique tirée des propres paroles de l'Écriture Sainte," it is not necessary to assume that he himself had any doubts regarding the truth of the two contentions mentioned. It suffices to assume that he had some misgivings as to whether what he was inclined to regard as solid demonstrations was likely to appear in the same light to all his readers. For if he had any misgivings of this kind, he was forced to make his political teaching, i.e., his natural law teaching concerning the rights and duties of rulers and of subjects, as independent of Scripture as it could possibly be.

To see why Locke could not be sure whether all his readers would regard the revealed character of the New Testament as demonstratively certain, one merely has to look at what he considered the proof of Jesus' divine mission. That proof is supplied by "the multitude of miracles he did before all sorts

56. *Treatises*, I, sec. 58.



of people." Now, according to Locke, who in this point is tacitly following Spinoza, one cannot prove that a given phenomenon is a miracle by proving that the phenomenon in question is supernatural; for, in order to prove that a phenomenon cannot be due to natural causes, one must know the limits of the power of nature, and such knowledge is hardly available. It is sufficient that the phenomenon which is said to attest a man's divine mission shows greater power than the phenomena which are said to disprove his claim. It may be doubted whether one can thus establish a clear distinction between miracles and nonmiracles, or whether a demonstrative argument can be based on Locke's notion of miracles. At any rate, in order to carry weight with people who were not eyewitnesses, the miracles must be sufficiently attested. The Old Testament miracles were not sufficiently attested to convince the pagans, but the miracles of Jesus and the Apostles were sufficiently attested to convince all men, so much so, that "the miracles [Jesus] did . . . never were, nor could be denied by any of the enemies, or opposers of Christianity."<sup>57</sup> This extraordinarily bold statement is particularly surprising in the mouth of a most competent contemporary of Hobbes and Spinoza. One could perhaps find Locke's remark less strange if one could be certain that he was not well read in "those justly

57. "A discourse of miracles," *Works*, VIII, 260-64; *Reasonableness*, pp. 135 and 146. *Ibid.*, pp. 137-38: the Old Testament "revelation was shut up in a little corner of the world. . . . The gentile world, in our Saviour's time, and several ages before, could have no attestation of the miracles on which the Hebrews built their faith, but from the Jews themselves, a people not known to the greatest part of mankind; contemned and thought vilely of, by those nations that did know them. . . . But our Saviour . . . did not confine his miracles or message to the land of Canaan, or the worshippers at Jerusalem. But he himself preached at Samaria, and did miracles in the borders of Tyre and Sidon, and before multitudes of people gathered from all quarters. And after his resurrection, sent apostles amongst the nations, accompanied with miracles; which were done in all parts so frequently, and before so many witnesses of all sorts, in broad day-light, that . . . the enemies of Christianity have never dared to deny them; no, not Julian himself: who neither wanted skill nor power to inquire into the truth." Cf. n. 59 below.



decried" authors.<sup>58</sup> But must one be well read in Hobbes and Spinoza in order to know that they deny the reality, or at least the certainty, of any miracles? And would not Locke's lack of familiarity with Hobbes's and Spinoza's writings considerably detract from his competence as a late-seventeenth-century writer on subjects of this kind? Quite apart from this, if no one denies the miracles reported in the New Testament, it would seem to follow that all men are Christians, for "where the miracle is admitted, the doctrine cannot be rejected."<sup>59</sup> Yet Locke knew that there were men who were familiar with the New Testament without being believing Christians: his *Reasonableness of Christianity*, in which his most emphatic statements regarding the New Testament miracles occur, was "chiefly designed for deists," of whom there was apparently "a great number" in his time.<sup>60</sup> Since Locke knew, as he admitted, of the existence of deists in his age and country, he must have been aware of the fact that a political teaching based on Scripture would not be universally accepted as unquestionably true, at least not without a previous and very

58. *Second Reply to the Bishop of Worcester*, p. 477: "I am not so well read in Hobbes or Spinoza, as to be able to say what were their opinions in this matter [the life after death]. But possibly there be those who will think your Lordship's authority of more use to them in the case, than those justly decried names." *A Second Vindication of the Reasonableness of Christianity* (*Works*, VI, 420): "I . . . did not know these words, he quoted out of the Leviathan, were there or any thing like them. Nor do I know yet, any farther than as I believe them to be there, from his quotation."

59. "A Discourse of Miracles," p. 259. Perhaps it will be suggested that Locke made a subtle distinction between "not denying the miracles" and "admitting the miracles." In that case the fact that the miracles reported in the New Testament were never denied and cannot be denied would not prove the divine mission of Jesus, and there would not exist any demonstrative proof of it. At any rate, the suggestion mentioned is contradicted by what Locke says elsewhere. Cf. *Second Vindication*, p. 340: "The principal of these [marks peculiarly appropriated to the Messiah] is his resurrection from the dead; which being the great and demonstrative proof of his being a Messiah . . ." with *ibid.*, p. 342: "His being or not being the Messiah, stands or falls with [his resurrection] . . . believe one, and you believe both; deny one of them, and you can believe neither."

60. *Second Vindication*, pp. 164, 264-65, 375.



complex argument for which we seek in vain in his writings.

One can state the issue in simpler terms as follows: The veracity of God is indeed a demonstration of any proposition which he has revealed. Yet "the whole strength of the certainty depends upon our knowledge that God revealed" the proposition in question, or "our assurance can be no greater than our knowledge is, that it is a revelation from God." And at least as regards all men who know of revelation only through tradition, "the knowledge we have that this revelation came at first from God, can never be so sure as the knowledge we have from the clear and distinct perception of the agreement or disagreement of our own ideas." Accordingly, our assurance that the souls of men shall live forever belongs to the province of faith and not to that of reason.<sup>61</sup> Yet since without that assurance "the just measures of right and wrong" do not have the character of a law, those just measures are not a law for reason. This would mean that there does not exist a law of nature. Therefore, if there is to be "a law knowable by the light of nature, that is, without the help of positive revelation," that law must consist of a set of rules whose validity does not presuppose life after death or belief in a life after death.

Such rules were established by the classical philosophers. The pagan philosophers, "who spoke from reason, made not much mention of the Deity in their ethics." They showed that virtue "is the perfection and the excellency of our nature; that she is herself a reward, and will recommend our names to future ages," but they left "her unendowed."<sup>62</sup> For they were

61. *Essay*, IV, 18, secs. 4-8; cf. n. 50 above.

62. From this it follows that, "however strange it may seem, the law-maker hath nothing to do with moral virtues and vices" but is limited in his function to the preservation of property (cf. *Treatises*, II, sec. 124; and J. W. Gough, *John Locke's Political Philosophy* [Oxford: Clarendon Press, 1950], p. 190). If virtue by itself is ineffectual, civil society must have a foundation other than human perfection or the inclination toward it; it must be based on the strongest desire in man, the desire for self-preservation, and therefore on his concern with property.



unable to show a necessary connection between virtue and prosperity or happiness, a connection which is not visible in this life and which can be guaranteed only if there is a life after death.<sup>63</sup> Still, while unassisted reason cannot establish a necessary connection between virtue and prosperity or happiness, the classical philosophers realized, and practically all men realize, a necessary connection between a kind of prosperity or happiness and a kind or part of virtue. There exists, indeed, a visible connection between "public happiness" or "the prosperity and temporal happiness of any people" and the general compliance with "*several* moral rules." These rules, which apparently are a part of the complete law of nature, "may receive from mankind a very general approbation, *without* either knowing or admitting *the true ground* of morality; which can only be the will and law of a God, who sees men in the dark, has in his hands rewards and punishments, and power enough to call to account the proudest offender." But even if, and precisely if, those rules are divorced from "the true ground of morality," they stand "on their true foundations": "[Prior to Jesus], those just measures of right and wrong, which necessity had anywhere introduced, the civil laws prescribed, or philosophers recommended, stood on *their true foundations*. They were looked on as bonds of society, and conveniencies of common life, and laudable practices."<sup>64</sup> However doubtful the status of the complete law of nature may have become in Locke's thought, the partial law of nature

63. *Reasonableness*, pp. 148-49: "Virtue and prosperity do not often accompany one another; and therefore virtue seldom had any followers. And it is no wonder she prevailed not much in a state, where the inconveniencies that attended her were visible, and at hand; and the rewards doubtful, and at a distance. Mankind, who are and must be allowed to pursue their happiness, nay, cannot be hindered; could not but think themselves excused from a strict observation of rules, which appeared so little to consist of their chief end, happiness; whilst they kept them from the enjoyments of this life; and they had little evidence and security of another." Cf. *ibid.*, pp. 139, 142-44, 150-51; *Essay*, I, 3, sec. 5, and II, 28, sec. 10-12.

64. *Reasonableness*, pp. 144 and 139; *Essay*, I, 3, secs. 4, 6, and 10 (the italics are not in the original); *Treatises*, II, secs. 7, 42, and 107.



which is limited to what "political happiness"—a "good of mankind in this world"—evidently requires would seem to have stood firm. Only this partial law of nature can have been recognized by him, in the last analysis, as a law of reason and therewith as truly a law of nature.

We must now consider the relation between what we call for the time being the partial law of nature and the New Testament law. If "no more nor no less" than the entire law of nature is supplied by the New Testament, if "all the parts" of the law of nature are made out in the New Testament in a manner which is "clear, plain, and easy to be understood," the New Testament must contain in particular clear and plain expressions of those prescriptions of the law of nature with which men must comply for the sake of political happiness.<sup>65</sup> According to Locke, one of the rules of "the law of God and nature" is to the effect that the government "must not raise taxes on the property of the people without the consent of the people, given by themselves or their deputies." Locke does not even attempt to confirm this rule by clear and plain statements of Scripture. Another very important and characteristic rule of the law of nature as Locke understands it, denies to the conqueror a right and title to the possessions of the vanquished: even in a just war the conqueror may not "dispossess the posterity of the vanquished." Locke himself admits that this "will seem a strange doctrine," i.e., a novel doctrine. In fact, it would seem that the opposite doctrine is at least as much warranted by Scripture as is Locke's. He quotes more than once Jephtha's saying "the Lord the Judge be judge"; but he fails even to allude to the fact that Jephtha's statement is made in the context of a controversy about the right of conquest, as well as to Jephtha's entirely un-Lockean view of the rights of the conqueror.<sup>66</sup> One is tempted to say that Jephtha's state-

65. Cf. also *Essay*, II, 28, sec. 11.

66. *Treatises*, II, secs. 142 (cf. sec. 136 n.), 180, 184; cf. also n. 51 above. *Ibid.*, secs. 21, 176, 241; cf. Judges 11:12-24; cf. also Hobbes's *Leviathan*, chap. xxiv (162).



ment, which refers to a controversy between two nations, is used by Locke as the *locus classicus* concerning controversies between the government and the people. The statement of Jephtha takes the place in Locke's doctrine of Paul's statement "Let every soul be subject to the higher powers," which he hardly, if ever, quotes.<sup>67</sup>

In addition, Locke's political teaching stands or falls by his natural law teaching concerning the beginnings of political societies. The latter teaching cannot well be based on Scripture because that beginning of a political society with which the Bible is chiefly concerned—that of the Jewish state—was the only beginning of a political society which was not natural.<sup>68</sup> Furthermore, Locke's entire political teaching is based on the assumption of a state of nature. This assumption is wholly alien to the Bible. The following fact is sufficiently revealing: in the *Second Treatise of Government*, in which Locke sets forth his own doctrine, explicit references to the state of nature abound; in the *First Treatise*, in which he criticizes Filmer's allegedly scriptural doctrine of the divine right of kings and therefore uses much more biblical material than in the *Second Treatise*, there occurs, if I am not mistaken, only one mention of the state of nature.<sup>69</sup> From the biblical point of view, the important distinction is the distinction, not between the state of nature and the state of civil society, but between the state of innocence and the state after the Fall. The state of nature, as Locke conceives of it, is not identical with either the state of innocence or the state after the Fall. If there is any place at all in biblical history for Locke's state of na-

67. Cf. especially the quotation from Hooker in *Treatises*, II, sec. 90 n., with the context in Hooker: in Hooker the passage quoted by Locke is immediately preceded by the quotation of Romans 13:1. Paul's statement occurs in a quotation (*Treatises*, sec. 237). Cf. also *ibid.*, sec. 13, where Locke refers to an objection in which the statement occurs that "God hath certainly appointed government," a statement which does not occur in Locke's rejoinder.

68. *Treatises*, II, secs. 101, 109, and 115.

69. *Ibid.*, I, sec. 90.



ture, the state of nature would begin after the flood, i.e., a long time after the Fall; for prior to God's grant to Noah and his sons, men did not have the natural right to meat which is a consequence of the natural right to self-preservation, and the state of nature is the state in which every man has "all the rights and privileges of the law of nature."<sup>70</sup> Now, if the state of nature begins a long time after the Fall, the state of nature would seem to partake of all characteristics of "the corrupt state of degenerate men." In fact, however, it is a "poor but virtuous age," an age characterized by "innocence and sincerity," not to say the golden age.<sup>71</sup> Just like the Fall itself, the punishment for the Fall ceased to be of any significance for Locke's political doctrine. He holds that even God's curse on Eve does not impose a duty on the female sex "not to endeavor to avoid" that curse: women may avoid the pangs of childbirth "if there could be found a remedy for it."<sup>72</sup>

The tension between Locke's natural law teaching and the New Testament is perhaps best illustrated by his teaching about marriage and related topics.<sup>73</sup> In the *First Treatise* he characterizes adultery, incest, and sodomy as sins. He indicates there that they are sins independently of the fact that

70. *Ibid.*, I, secs. 27 and 39; II, sec. 25; cf. also II, secs. 6 and 87; and II, secs. 36 and 38. In II, secs. 56-57, Locke seemingly says that Adam was in the state of nature prior to the Fall. According to *ibid.*, sec. 36 (cf. 107, 108, 116), the state of nature is situated in "the first ages of the world" or in "the beginning of things" (cf. Hobbes, *De cive*, V, 2); cf. also *Treatises*, II, sec. 11, end, with Gen. 4:14-15 and 9:5-6.

71. Cf. *Reasonableness*, p. 112, and *Treatises*, I, secs. 16 and 44-45 with *ibid.*, II, secs. 110-11 and 128. Note the plural "all those [ages]" *ibid.*, sec. 110; there have been many examples of the state of nature, whereas there was only once a state of innocence.

72. *Treatises*, I, sec. 47.

73. As regards the relation between Locke's teaching concerning property and the New Testament teaching, it suffices here to mention his interpretation of Luke 18:22: "This I look on to be the meaning of the place; this, of selling all he had, and giving it to the poor, not being a standing law of [Jesus'] kingdom; but a probationary command to this young man; to try whether he truly believed him to be the Messiah, and was ready to obey his commands, and relinquish all to follow him, when he, his prince, required it" (*Reasonableness*, p. 120).



"they cross the main intention of nature." One is therefore forced to wonder whether their being sins is not chiefly due to "positive revelation." Later on he raises the question "what in nature is the difference betwixt a wife and a concubine?" He does not answer that question, but the context suggests that natural law is silent about that difference. Furthermore, he indicates that the distinction between those whom men may and may not marry is based exclusively on the revealed law. In his thematic discussion of conjugal society in the *Second Treatise*,<sup>74</sup> he makes it quite clear that, according to natural law, conjugal society is not necessarily for life; the end of conjugal society (procreation and education) merely requires that "the male and female in mankind are tied to a longer conjunction than other creatures." He does not leave it at saying that "the conjugal bonds" must be more "lasting in man than the other species of animals"; he also demands that those bonds be "more firm . . . in man than the other species of animals"; he fails to tell us, however, how firm they should be.

74. The thematic discussion of conjugal society occurs in chap. vii of the *Second Treatise*, in a chapter entitled, not "Of Conjugal Society," but "Of Political or Civil Society." That chapter happens to be the only chapter of the entire *Treatises* which opens with the word "God." It happens to be followed by the only chapter of the entire *Treatises* which opens with the word "Men." Chapter vii begins with a clear reference to the divine institution of marriage as recorded in Genesis 2:18; all the more striking is the contrast between the biblical doctrine (especially in its Christian interpretation) and Locke's own doctrine. It so happens that there is also only one chapter in the *Essay* which opens with the word "God" and which is followed by the only chapter of the *Essay* whose first word is "Man" (III, 1 and 2). In the only chapter of the *Essay* which opens with the word "God," Locke tries to show that words are "ultimately derived from such as signify sensible ideas," and he remarks that, by the observations to which he refers, "we may give some kind of guess *what kind of notions they were*, and whence they derived, *which filled their minds who were the first beginners of languages*." (The italics are not in the original.) Locke thus cautiously contradicts the biblical doctrine which he adopts in the *Treatises* (II, sec. 56) and according to which the first beginner of language, Adam, "was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable from the first instant of his being to . . . govern his actions according to the dictates of the law of reason which God had implanted in him."



Certainly, polygamy is perfectly compatible with natural law. It should also be noted that what Locke says about the difference between conjugal society among human beings and conjugal society among brutes—viz., that the former is, or ought to be, “more firm and lasting” than the latter—does not require any prohibition against incest and that he therefore remains silent about such prohibitions. In accordance with all this, he declares later on, in full agreement with Hobbes and in full disagreement with Hooker, that civil society is the sole judge of which “transgressions” are, and which are not, deserving of punishment.<sup>75</sup>

Locke’s doctrine concerning conjugal society naturally affects his teaching regarding the rights and duties of parents and children. He does not tire of quoting “Honour your parents.” But he gives the biblical commands an unbiblical meaning by disregarding entirely the biblical distinctions between lawful and unlawful unions of men and women. Furthermore, as regards the obedience which children owe to their parents, he teaches that that duty “terminates with the minority of the child.” If parents retain “a strong tie” on the obedience of their children after the latter have come of age, this is due merely to the fact that “it is commonly in the father’s power to bestow [his estate] with a more sparing or liberal hand, according as the behaviour of this or that child hath comported with his will and humour.” “This is,” to quote Locke’s understatement, “no small tie on the obedience of children.” But it is certainly, as he states explicitly, “no natural tie”: children who are of age are under no natural law obligation to obey their parents. Locke insists all the more strongly on the children’s “perpetual obligation of honouring their parents.”

75. *Treatises*, I, secs. 59, 123, 128; II, secs. 65 and 79–81. Cf. *Treatises*, II, secs. 88 and 136 (and note) with Hooker, *Laws of Ecclesiastical Polity*, I, 10, sec. 10, and III, 9, sec. 2, on the one hand, and Hobbes, *De cive*, XIV, 9, on the other. Cf. Gough, *op. cit.*, p. 189. As for the higher right of the mother, as compared with the father, see especially *Treatises*, I, sec. 55, where Locke tacitly follows Hobbes (*De cive*, IX, 3). Cf. n. 84 below.



“Nothing can cancel” this duty. It “is always due from children to their parents.” Locke finds the natural law basis of that perpetual duty in the fact that the parents have begotten their children. He admits, however, that if the parents have been “unnaturally careless” of their children, they “might” “perhaps” forfeit their right “to much of that duty comprehended in the command, ‘Honour your parents.’” He goes beyond this. In the *Second Treatise*, he indicates that “the bare act of begetting” does not give the parents any claim to being honored by their children: “the honour due from a child places in the parents a perpetual right to respect, reverence, support, and compliance, too, more or less, as the father’s care, cost, and kindness in his education have been more or less.”<sup>76</sup> It follows from this that if the father’s care, cost, and kindness have been zero, his right to honor will become zero too. The categorical imperative “Honour thy father and thy mother” becomes the hypothetical imperative “Honour thy father and thy mother if they have deserved it of you.”

It can safely be said, we think, that Locke’s “partial law of nature” is not identical with clear and plain teachings of the New Testament or of Scripture in general. If “all the parts” of the law of nature are made out in the New Testament in a clear and plain manner, it follows that the “partial law of nature” does not belong at all to the law of nature. This conclusion is supported also by the following consideration: In order to be a law in the proper sense of the term, the law of nature must be known to have been given by God. But the “partial law of nature” does not require belief in God. The “partial law of nature” circumscribes the conditions which a nation must fulfil in order to be civil or civilized. Now the Chinese are “a very

76. *Treatises*, I, secs. 63, 90, 100; II, secs. 52, 65–67, 69, 71–73. Locke seems to imply that, other things being equal, the children of the rich are under a stricter obligation to honor their parents than the children of the poor. This would be in perfect agreement with the fact that wealthy parents have a stronger tie on their children’s obedience than poor parents.



great and civil people" and the Siamites are a "civilized nation," and both the Chinese and the Siamites "want the idea and knowledge of God."<sup>77</sup> The "partial law of nature" is, then, not a law in the proper sense of the term.<sup>78</sup>

We thus arrive at the conclusion that Locke cannot have recognized any law of nature in the proper sense of the term. This conclusion stands in shocking contrast to what is generally thought to be his doctrine, and especially the doctrine of the *Second Treatise*. Before turning to an examination of the *Second Treatise*, we beg the reader to consider the following facts: The accepted interpretation of Locke's teaching leads to the consequence that "Locke is full of illogical flaws and inconsistencies,"<sup>79</sup> of inconsistencies, we add, which are so obvious that they cannot have escaped the notice of a man of his rank and his sobriety. Furthermore, the accepted interpretation is based on what amounts to a complete disregard of Locke's caution, of a kind of caution which is, to say the least, compatible with so involving one's sense that one cannot easily be understood and with going with the herd in one's outward professions. Above all, the accepted interpretation does not pay sufficient attention to the character of the *Treatise*; it somehow assumes that the *Treatise* contains the philosophic presentation of Locke's political doctrine, whereas it contains, in fact, only its "civil" presentation. In the *Treatise*, it is less Locke the philosopher than Locke the Englishman who ad-

77. *Treatises*, I, sec. 141; *Essay*, I, 4, sec. 8; *Second Reply to the Bishop of Worcester*, p. 486. *Reasonableness*, p. 144: "Those just measures of right and wrong . . . stood on their true foundations. They were looked on as bonds of society, and conveniences of common life, and laudable practices. But where was it that their obligation was thoroughly known and allowed [prior to Jesus], and they received as precepts of a law; of the highest law, the law of nature? That could not be, without a clear knowledge and acknowledgment of the law-maker" (compare p. 213 above and n. 49 above).

78. Accordingly, Locke sometimes identifies the law of nature not with the law of reason but with reason simply (cf. *Treatises*, I, sec. 101, with II, secs. 6, 11, 181; cf. also *ibid.*, I, sec. 111, toward the end).

79. Gough, *op. cit.*, p. 123.



dresses not philosophers, but Englishmen.<sup>80</sup> It is for this reason that the argument of that work is based partly on generally accepted opinions, and even to a certain extent on scriptural principles: "The greatest part cannot know, and therefore they must believe," so much so, that even if philosophy had "given us ethics in a science like mathematics, in every part demonstrable, . . . the instruction of the people were best still to be left to the precepts and principles of the gospel."<sup>81</sup>

Yet, however much Locke may have followed tradition in the *Treatise*, already a summary comparison of its teaching with the teachings of Hooker and of Hobbes would show that Locke deviated considerably from the traditional natural law teaching and followed the lead given by Hobbes.<sup>82</sup> There is, indeed, only one passage in the *Treatise* in which Locke explicitly notes that he deviates from Hooker. But the passage draws our attention to a radical deviation. After having quoted Hooker, Locke says: "But I, moreover, affirm that all men are naturally in [the state of nature]." He thus suggests

80. Cf. *Treatises*, II, sec. 52 beginning, and I, sec. 109 beginning, with *Essay*, III, 9, secs. 3, 8, 15, and chap. xi, sec. 11; *Treatises*, Preface, I, secs. 1 and 47; II, secs. 165, 177, 223, and 239.

81. *Reasonableness*, p. 146. Cf. the reference to the other life in *Treatises*, II, secs. 21 end, with sec. 13 end. Cf. the references to religion in *Treatises*, II, secs. 92, 112, 209-10.

82. In *Treatises*, II, secs. 5-6, Locke quotes Hooker, I, 8, sec. 7. The passage is used by Hooker for establishing the duty of loving one's neighbor as one's self; it is used by Locke for establishing the natural equality of all men. In the same context Locke replaces the duty of mutual love, of which Hooker had spoken, by the duty of refraining from harming others, i.e., he drops the duty of charity (cf. Hobbes, *De cive*, IV, 12, and 23). According to Hooker (I, 10, sec. 4), fathers have by nature "a supreme power in their families"; according to Locke (*Treatises*, II, secs. 52 ff.), any natural right of the father is, to say the least, fully shared by the mother (cf. n. 75 above). According to Hooker (I, 10, sec. 5), natural law enjoins civil society; according to Locke (*Treatises*, II, secs. 95 and 13), "any number of men *may*" form a civil society (the italics are not in the original). Cf. Hobbes, *De cive*, VI, 2, and n. 67 above. Cf. the interpretation of self-preservation in Hooker, I, 5, sec. 2, with the entirely different interpretation in *Treatises*, I, secs. 86 and 88. Consider, above all, the radical disagreement between Hooker (I, 8, secs. 2-3) and Locke (*Essay*, I, 3) in regard to the *consensus gentium* evidence for the law of nature.



that, according to Hooker, some men were in fact or accidentally in the state of nature. Actually, Hooker had not said anything about the state of nature: the whole doctrine of the state of nature is based on a break with Hooker's principles, i.e., with the principles of the traditional nature law doctrine. Locke's notion of the state of nature is inseparable from the doctrine "that in the state of nature everyone has the executive power of the law of nature." He states twice in the context referred to that this doctrine is "strange," i.e., novel.<sup>83</sup>

For what is the reason why, according to Locke, the admission of a law of nature requires the admission of a state of nature, and more particularly the admission that in the state of nature "every man hath the right to . . . be executioner of the law of nature"? ". . . Since it would be utterly in vain to suppose a rule set to the free actions of man, without annexing to it some enforcement of good or evil to determine his will, we must wherever we suppose a law, suppose also some reward or punishment annexed to that law." In order to be a law, the law of nature must have sanctions. According to the traditional view those sanctions are supplied by the judgment of the conscience, which is the judgment of God. Locke rejects this view. According to him, the judgment of the conscience is so far from being the judgment of God that the conscience "is nothing else but our own opinion or judgment of the moral rectitude or pravity of our own actions." Or to quote Hobbes, whom Locke tacitly follows: "private consciences . . . are but private opinions." Conscience cannot therefore be a guide; still less can it supply sanctions. Or if the verdict of the con-

83. *Treatises*, II, secs. 9, 13, and 15; cf. sec. 91 n., where Locke, quoting Hooker, refers in an explanatory remark to the state of nature which is not mentioned by Hooker; cf. also sec. 14 with Hobbes, *Leviathan*, chap. xiii (83). As regards the "strange" character of the doctrine that in the state of nature everyone has the executive power of the law of nature, cf. Thomas Aquinas *Summa theologiae* ii. 2. qu. 64, a. 3, and Suarez, *Tr. de legibus*, III, 3, secs. 1 and 3, on the one hand, and Grotius *De jure belli* ii. 20. secs. 3 and 7 and ii. 25. sec. 1, as well as Richard Cumberland, *De legibus naturae*, chap. 1, sec. 26, on the other.



science is identified with right opinion about the moral quality of our actions, it is utterly powerless by itself: "View but an army at the sacking of a town, and see what observation or sense of moral principles, or what touch of conscience, for all the outrages they do." If there are to be sanctions for the law of nature in this world, those sanctions must be supplied by human beings. But any "enforcement" of the law of nature which takes place in and through civil society appears to be the outcome of human convention. Therefore, the law of nature will not be effective in this world and hence not be a true law, if it is not effective in the state antedating civil society or government—in the state of nature; even in the state of nature everyone must be effectively responsible to other human beings. This, however, requires that everyone in the state of nature have the right to be the executioner of the law of nature: "the law of nature would, as all other laws that concern men in this world, be in vain, if there were nobody that in the state of nature had a power to execute that law." The law of nature is indeed given by God, but its being a law does not require that it be known to be given by God, because it is immediately enforced, not by God or by the conscience, but by human beings.<sup>84</sup>

84. *Reasonableness*, p. 114: "... if there were no punishment for the transgressors of [Jesus' laws], his laws would not be the laws of a king, . . . but empty talk, without force, and without influence." *Treatises*, II, secs. 7, 8, 13 end, 21 end; cf. *ibid.*, sec. 11, with I, sec. 56. *Essay*, I, 3, secs. 6–9, and II, 28, sec. 6; Hobbes, *Leviathan*, chap. xxix (212). When speaking of everyone's natural right to be the executioner of the law of nature, Locke refers to "that great law of nature, 'Whoso sheddeth man's blood, by man shall his blood be shed' " (Gen. 9:6). But he omits the biblical reason, "for in the image of God made he man." The Lockean reason for the right to inflict capital punishment on murderers is that man may "destroy *things* noxious" to men (the italics are not in the original). Locke disregards the fact that both the murdered and the murderer are made in the image of God: the murderer "may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security" (*Treatises*, II, secs. 8, 10, 11, 16, 172, 181; cf. I, sec. 30). Cf. Thomas Aquinas *Summa theologiae* i. qu. 79, a. 13 and ii. 1. qu. 96, a. 5 ad 3 (cf. a. 4, obj. 1); Hooker, I, 9, sec. 2–10, sec. 1; Grotius *De jure belli*, Prolegomena, secs. 20 and 27; Cumberland, *loc. cit.*



The law of nature cannot be truly a law if it is not effective in the state of nature. It cannot be effective in the state of nature if the state of nature is not a state of peace. The law of nature imposes on everyone the perfect duty of preserving the rest of mankind "as much as he can," but only "when his own preservation comes not in competition." If the state of nature were characterized by habitual conflict between self-preservation and the preservation of others, the law of nature which "willeth the peace and preservation of all mankind" would be ineffectual: the higher claim of self-preservation would leave no room for concern with others. The state of nature must therefore be "a state of peace, good-will, mutual assistance, and preservation." This means that the state of nature must be a social state; in the state of nature all men "make up one society" by virtue of the law of nature, although they have no "common superior on earth." Inasmuch as self-preservation requires food and other necessities, and scarcity of such things leads to conflict, the state of nature must be a state of plenty: "God has given us all things richly." The law of nature cannot be a law if it is not known; it must be known and therefore it must be knowable in the state of nature.<sup>85</sup>

After having drawn or suggested this picture of the state of nature especially in the first pages of the *Treatise*, Locke demolishes it as his argument proceeds. The state of nature, which at first glance seems to be the golden age ruled by God or good demons, is literally a state without government, "pure anarchy." It could last forever, "were it not for the corruption and viciousness of degenerate men"; but unfortunately "the greater part" are "no strict observers of equity and justice." For this reason, to say nothing of others, the state of nature has great "inconveniences." Many "mutual grievances, injuries and wrongs . . . attend men in the state of nature"; "strife and troubles would be endless" in it. It "is full of fears

85. *Treatises*, I, sec. 43; II, secs. 6, 7, 11, 19, 28, 31, 51, 56-57, 110, 128, 171, 172.



and continual dangers." It is "an ill condition." Far from being a state of peace, it is a state in which peace and quiet are uncertain. The state of peace is civil society; the state antedating civil society is the state of war.<sup>86</sup> This is either the cause or the effect of the fact that the state of nature is a state not of plenty but of penury. Those living in it are "needy and wretched." Plenty requires civil society.<sup>87</sup> Being "pure anarchy," the state of nature is not likely to be a social state. In fact, it is characterized by "want of society." "Society" and "civil society" are synonymous terms. The state of nature is "loose." For "the first and strongest desire God planted in man" is not the concern with others, not even concern with one's offspring, but the desire for self-preservation.<sup>88</sup>

The state of nature would be a state of peace and good will if men in the state of nature were under the law of nature. But "nobody can be under a law which is not promulgated to him." Man would know the law of nature in the state of nature if "the dictates of the law of nature" were "implanted in him" or "writ in the hearts of mankind." But no moral rules are "imprinted in our minds" or "written on [our] hearts" or "stamped upon [our] minds" or "implanted." Since there is no *habitus* of moral principles, no *synderesis* or conscience, all knowledge of the law of nature is acquired by study: to know the law of nature, one must be "a studier of that law." The law of nature becomes known only through demonstration. The question, therefore, is whether men in the state of nature are capable of becoming studiers of the law of nature. "The greatest part of mankind want leisure or capacity for demonstration. . . . And you may as soon hope to have all the day-

86. *Ibid.*, II, secs. 13, 74, 90, 91 and note, 94, 105, 123, 127, 128, 131, 135 n., 136, 212, 225-27.

87. *Ibid.*, secs. 32, 37, 38, 41-43, 49.

88. *Ibid.*, secs. 21, 74, 101, 105, 116, 127, 131 beginning, 132 beginning, 134 beginning (cf. 124 beginning), 211, 220, 243; cf. I, sec. 56, with sec. 88. Cf. both passages, as well as I, sec. 97, and II, secs. 60, 63, 67, 170, with *Essay*, I, 3, secs. 3, 9, 19.



labourers and tradesmen, and spinsters and dairy-maids, perfect mathematicians, as to have them perfect in ethics this way." Yet a day laborer in England is better off than a king of the Americans, and "in the beginning all the world was America, and more so than it is now." "The first ages" are characterized by "negligent and unforeseeing innocence" rather than by habits of study.<sup>89</sup> The condition in which man lives in the state of nature—"continual dangers" and "penury"—make impossible knowledge of the law of nature: the law of nature is not promulgated in the state of nature. Since the law of nature must be promulgated in the state of nature if it is to be a law in the proper sense of the term, we are again forced to conclude that the law of nature is not a law in the proper sense of the term.<sup>90</sup>

What, then, is the status of the law of nature in Locke's doctrine? What is its foundation? There is no rule of the law of nature which is innate, "that is, . . . imprinted on the mind as a duty." This is shown by the fact that there are no rules of the law of nature, "which, as practical principles ought, do continue constantly to operate and influence all our actions without ceasing [and which] may be observed in all persons and all ages, steady and universal." However, "Nature . . . has put into man a desire of happiness, and an aversion to misery; these, indeed, are innate practical principles": they are universally and unceasingly effective. The desire for happiness and the pursuit of happiness to which it gives rise are not duties. But "men . . . must be allowed to pursue their happiness, nay, cannot be hindered." The desire for happiness and the pursuit of happiness have the character of an absolute right, of a natural right. There is, then, an innate natural right, while

89. Cf., above all, *Treatises*, II, secs. 11 end, and 56, with *Essay*, I, 3, sec. 8, and I, 4, sec. 12; *Treatises*, II, secs. 6, 12, 41, 49, 57, 94, 107, 124, 136; *Essay*, I, 3, secs. 1, 6, 9, 11-13, 26, 27; *Reasonableness*, pp. 146, 139, 140. Cf. n. 74 above.

90. Cf. the use of the term "crime" (as distinguished from "sin") in *Treatises*, II, secs. 10, 11, 87, 128, 218, 230, with *Essay*, II, 28, secs. 7-9.



there is no innate natural duty. To understand how this is possible, one merely has to reformulate our last quotation: pursuit of happiness is a right, it "must be allowed," because "it cannot be hindered." It is a right antedating all duties for the same reason that, according to Hobbes, establishes as the fundamental moral fact the right of self-preservation: man must be allowed to defend his life against violent death because he is driven to do so by some natural necessity which is not less than that by which a stone is carried downward. Being universally effective, natural right, as distinguished from natural duty, is effective in the state of nature: man in the state of nature is "absolute lord of his own person and possessions."<sup>91</sup> Since the right of nature is innate, whereas the law of nature is not, the right of nature is more fundamental than the law of nature and is the foundation of the law of nature.

Since happiness presupposes life, the desire for life takes precedence over the desire for happiness in case of conflict. This dictate of reason is at the same time a natural necessity: "the first and strongest desire God planted in men, and wrought into the very principles of their nature, is that of self-preservation." The most fundamental of all rights is therefore the right of self-preservation. While nature has put into man "a strong desire of preserving his life and being," it is only man's reason which teaches him what is "necessary and useful to his being." And reason—or, rather, reason applied to a subject to be specified presently—is the law of nature. Reason teaches that "he that is master of himself and his own life has a right, too, to the means of preserving it." Reason further teaches that, since all men are equal in regard to the desire, and hence to the right, of self-preservation, they are equal in the decisive respect, notwithstanding any natural inequalities

91. *Essay*, I, 3, secs. 3 and 12; *Reasonableness*, p. 148; *Treatises*, II, sec. 123 (cf. sec. 6). Cf. Hobbes, *De cive*, I, 7, and III, 27 n.



in other respects.<sup>92</sup> From this Locke concludes, just as Hobbes did, that in the state of nature everyone is the judge of what means are conducive to his self-preservation, and this leads him, as it did Hobbes, to the further conclusion that in the state of nature "any man may do what he thinks fit."<sup>93</sup> No wonder, therefore, that the state of nature is "full of fears and continual dangers." But reason teaches that life cannot be preserved, let alone enjoyed, except in a state of peace: reason wills peace. Reason therefore wills such courses of action as are conducive to peace. Reason dictates, accordingly, that "no one ought to harm another," that he who harms another—who therefore has renounced reason—may be punished by everyone and that he who is harmed may take reparations. These are the fundamental rules of the law of nature on which the argument of the *Treatise* is based: the law of nature is nothing other than the sum of the dictates of reason in regard to men's "mutual security" or to "the peace and safety" of mankind. Since in the state of nature all men are judges in their own cases and since, therefore, the state of nature is characterized by constant conflict that arises from the very law of nature, the state of nature is "not to be endured": the only remedy is government or civil society. Reason accordingly dictates how civil society must be constructed and what its rights or bounds are: there is a rational public law or a natural constitutional law. The principle of that public law is that all social or governmental power is derivative from powers which by nature belong to the individuals. The contract of the individuals actually con-

92. *Treatises*, I, secs. 86–88, 90 beginning, 111 toward the end; II, secs. 6, 54, 149, 168, 172. One may describe the relation of the right of self-preservation to the right to the pursuit of happiness as follows: the former is the right to "subsist" and implies the right to what is necessary to man's being; the second is the right to "enjoy the conveniences of life" or to "comfortable preservation" and implies, therefore, also the right to what is useful to man's being without being necessary for it (cf. *Treatises*, I, secs. 86, 87, 97; II, secs. 26, 34, 41).

93. *Ibid.*, II, secs. 10, 13, 87, 94, 105, 129, 168, 171.



cerned with their self-preservation—not the contract of the fathers qua fathers or divine appointment or an end of man that is independent of the actual wills of all individuals—creates the whole power of society: “the supreme power in every commonwealth [is] but the joint power of every member of the society.”<sup>94</sup>

Locke's natural law teaching can then be understood perfectly if one assumes that the laws of nature which he admits are, as Hobbes put it, “but conclusions, or theorems concerning what conduces to the conservation and defense” of man over against other men. And it must be thus understood, since the alternative view is exposed to the difficulties which have been set forth. The law of nature, as Locke conceives of it, formulates the conditions of peace or, more generally stated, of “public happiness” or “the prosperity of any people.” There is therefore a kind of sanction for the law of nature in this world: the disregard of the law of nature leads to public misery and penury. But this sanction is insufficient. Universal compliance with the law of nature would indeed guarantee perpetual peace and prosperity everywhere on earth. Failing such universal compliance, however, it may well happen that a society which complies with the law of nature enjoys less of temporal happiness than a society which transgresses the law of nature. For in both foreign and domestic affairs victory does not always favor “the right side”: the “great robbers . . . are too big for the weak hands of justice in this world.” There remains, however, at least this difference between those who strictly comply with the law of nature and those who do not, that only the former can act and speak consistently; only the former can consistently maintain that there is a fundamental difference between civil societies and gangs of robbers, a distinction to which every society and every government is forced to appeal time and again. In a word, the law of nature

94. *Ibid.*, secs. 4, 6–11, 13, 96, 99, 127–30, 134, 135, 142, 159.



is "a creature of the understanding rather than a work of nature"; it is "barely in the mind," a "notion," and not "in the things themselves." This is the ultimate reason why ethics can be raised to the rank of a demonstrative science.<sup>95</sup>

One cannot clarify the status of the law of nature without considering the status of the state of nature. Locke is more definite than Hobbes in asserting that men actually lived in the state of nature or that the state of nature is not merely a hypothetical assumption.<sup>96</sup> By this he means, in the first place, that men actually lived, and may live, without being subject to a common superior on earth. He means, furthermore, that men living in that condition, who are studiers of the law of nature, would know how to set about remedying the inconveniences of their condition and to lay the foundations for public happiness. But only such men could know the law of nature while living in a state of nature who have already lived in civil society, or rather in a civil society in which reason has been properly cultivated. An example of men who are in the state of nature under the law of nature would therefore be an elite among the English colonists in America rather than the wild Indians. A better example would be that of any highly civilized men after the breakdown of their society. It is only one step from this to the view that the most obvious example

95. *Ibid.*, secs. 1, 12, 176-77, 202; *Essay*, III, 5, sec. 12, and IV, 12, secs. 7-9 (cf. Spinoza, *Ethics*, IV, praef. and 18 schol.). As for the element of legal fiction involved in "the law of nature and reason," cf. *Treatises*, II, sec. 98 beginning, with sec. 96. Cf. *Reasonableness*, p. 11: "the law of reason, or, as it is called, the law of nature." Cf. also Section A, n. 8 above, and nn. 113 and 119 below. Hobbes, *De cive*, Ep. ded., and *Leviathan*, chap. xv (96 and 104-5).

96. Cf. *Leviathan*, chap. xiii (83)—see also the Latin version—with *Treatises*, II, secs. 14, 100-103, 110. The reason for Locke's deviation from Hobbes is that, according to Hobbes, the state of nature is worse than any kind of government, whereas, according to Locke, the state of nature is preferable to arbitrary and lawless government. Hence Locke teaches that the state of nature is more viable from the point of view of sensible men than "absolute monarchy": the state of nature must be, or have been, actual.



of men in the state of nature under the law of nature is that of men living in civil society, in so far as they reflect on what they could justly demand from civil society or on the conditions under which civil obedience would be reasonable. Thus it becomes ultimately irrelevant whether the state of nature understood as a state in which men are subject only to the law of nature, and not to any common superior on earth, was ever actual or not.<sup>97</sup>

It is on the basis of Hobbes's view of the law of nature that Locke opposes Hobbes's conclusions. He tries to show that Hobbes's principle—the right of self-preservation—far from favoring absolute government, requires limited government. Freedom, “freedom from arbitrary, absolute power,” is “the fence” to self-preservation. Slavery is therefore against natural law except as a substitute for capital punishment. Nothing which is incompatible with the basic right of self-preservation, and hence nothing to which a rational creature cannot be supposed to have given free consent, can be just; hence civil society or government cannot be established lawfully by force or conquest: consent alone “did or could give beginning to any lawful government in the world.” For the same reason Locke condemns absolute monarchy or, more precisely, “absolute arbitrary power . . . of any one or more” as well as “governing without settled standing laws.”<sup>98</sup> In spite of the limitations which Locke demands, the commonwealth remains for him, as it was for Hobbes, “the mighty leviathan”: in entering civil society, “men give up all their natural power to the society which they enter into.” Just as Hobbes did, so Locke admits only one contract: the contract of union which every

97. Cf. *Treatises*, II, secs. 111, 121, 163; cf. Hobbes, *De cive*, praef.: “in jure civitatis, civiumque officiis investigandis opus est, non quidem ut dissolvatur civitas, sed tamen ut tamquam dissoluta consideretur.”

98. *Treatises*, I, secs. 33 and 41; II, secs. 13, 17, 23, 24, 85, 90–95, 99, 131, 132, 137, 153, 175–76, 201–2; cf. Hobbes, *De cive*, V, 12, and VIII, 1–5.



individual makes with every other individual of the same multitude is identical with the contract of subjection. Just as Hobbes did, so Locke teaches that, by virtue of the fundamental contract, every man "puts himself under an obligation to everyone of that society to submit to the determination of the majority, and to be concluded by it"; that, therefore, the fundamental contract establishes immediately an unqualified democracy; that this primary democracy may by majority vote either continue itself or transform itself into another form of government; and that the social contract is therefore in fact identical with a contract of subjection to the "sovereign" (Hobbes) or to the "supreme power" (Locke) rather than to society.<sup>99</sup> Locke opposes Hobbes by teaching that wherever "the people" or "the community," i.e., the majority, have placed the supreme power, they still retain "a supreme power to remove or alter" the established government, i.e., they still retain a right of revolution.<sup>100</sup> But this power (which is normally dormant) does not qualify the subjection of the individual to the community or society. On the contrary, it is only fair to say that Hobbes stresses more strongly than does Locke the individual's right to resist society or the government whenever his self-preservation is endangered.<sup>101</sup>

99. *Treatises*, II, secs. 89, 95-99, 132, 134, 136; Hobbes, *De cive*, V, 7; VI, 2, 3, 17; VIII, 5, 8, 11; cf. also *Leviathan*, chaps. xviii (115) and xix (126).

100. *Treatises*, II, secs. 149, 168, 205, 208, 209, 230. Locke teaches, on the one hand, that society can exist without government (*ibid.*, secs. 121 end and 211) and, on the other hand, that society cannot exist without government (*ibid.*, secs. 205 and 219). The contradiction disappears if one considers the fact that society exists, and acts, without government only in the moment of revolution. If society, or "the people," could not exist and hence not act while there is no government, i.e., no lawful government, there could be no action of "the people" against the *de facto* government. The revolutionary action thus understood is a kind of majority decision which establishes a new legislative or supreme power in the very moment in which it abolishes the old one.

101. In accordance with this, Locke asserts more emphatically than did Hobbes the individual's duty of military service (cf. *Treatises*, II, secs. 88, 130, 168, 205, and 208, with *Leviathan*, chaps. xxi [142-43], xiv [86-87], and xxviii [202]).



Locke would nevertheless have been justified in contending that the mighty leviathan, as he had constructed it, offered a greater guarantee for the individual's self-preservation than Hobbes's Leviathan. The individual's right of resistance to organized society, which Hobbes had stressed and which Locke did not deny, is an ineffectual guaranty for the individual's self-preservation.<sup>102</sup> Since the only alternative to pure anarchy—to a condition in which everyone's self-preservation is in continual danger—is that "men give up all their natural power to the society which they enter into"; the only effective guaranty for the rights of the individual is that society be so constructed as to be incapable of oppressing its members: only a society or a government thus constructed is legitimate or in accordance with natural law; only such a society can justly demand that the individual surrender to it all his natural power. According to Locke, the best institutional safeguards for the rights of the individuals are supplied by a constitution that, in practically all domestic matters, strictly subordinates the executive power (which must be strong) to law, and ultimately to a well-defined legislative assembly. The legislative assembly must be limited to the making of laws as distinguished from "extemporary, arbitrary decrees"; its members must be elected by the people for fairly short periods of tenure and therefore be "themselves subject to the laws they have made"; the electoral system must take account of both numbers and wealth.<sup>103</sup> For, although Locke seems to have thought that the individual's self-preservation is less seriously threatened by the majority than by monarchic or oligarchic rulers, he cannot be said to have had an implicit faith in the majority as a guarantor of the rights of the individual.<sup>104</sup> In the pas-

102. *Treatises*, II, secs. 168 and 208.

103. *Ibid.*, secs. 94, 134, 136, 142, 143, 149, 150, 153, 157-59.

104. See the examples of tyranny mentioned in *Treatises*, II, sec. 201: no example of tyranny by the majority is given. Cf. also Locke's remarks on the character of the people, *ibid.*, sec. 223: the people are "slow" rather than "unsteady."



sages in which he seems to describe the majority as such a guarantor, he is speaking of cases in which the individuals' self-preservation is threatened by tyrannical monarchic or oligarchic rulers and wherein, therefore, the last and only hope for the suffering individual obviously rests on the dispositions of the majority. Locke regarded the power of the majority as a check on bad government and a last resort against tyrannical government; he did not regard it as a substitute for government or as identical with government. Equality, he thought, is incompatible with civil society. The equality of all men in regard to the right of self-preservation does not obliterate completely the special right of the more reasonable men. On the contrary, the exercise of that special right is conducive to the self-preservation and happiness of all. Above all, since self-preservation and happiness require property, so much so that the end of civil society can be said to be the preservation of property, the protection of the propertied members of society against the demands of the indigent—or the protection of the industrious and rational against the lazy and quarrelsome—is essential to public happiness or the common good.<sup>105</sup>

Locke's doctrine of property, which is almost literally the central part of his political teaching, is certainly its most characteristic part.<sup>106</sup> It distinguishes his political teaching most clearly not only from that of Hobbes but from the traditional teachings as well. Being a part of his natural law teaching, it partakes of all the complexities of the latter. Its peculiar difficulty can be provisionally stated as follows: Property is an institution of natural law; natural law defines the manner and

105. *Ibid.*, secs. 34, 54, 82, 94, 102, 131, 157–58.

106. After I had finished this chapter, my attention was drawn to C. B. Macpherson's article, "Locke on Capitalist Appropriation," *Western Political Quarterly*, 1951, pp. 550–66. There is considerable agreement between Mr. Macpherson's interpretation of the chapter on property and the interpretation set forth in the text. Cf. *American Political Science Review*, 1950, pp. 767–70.



the limitations of just appropriation. Men own property prior to civil society; they enter civil society in order to preserve or protect the property which they acquired in the state of nature. But, once civil society is formed, if not before, the natural law regarding property ceases to be valid; what we may call "conventional" or "civil" property—the property which is owned within civil society—is based on positive law alone. Yet, while civil society is the creator of civil property, it is not its master: civil society must respect civil property; civil society has, as it were, no other function but to serve its own creation. Locke claims for civil property a much greater sanctity than for natural property, i.e., the property which is acquired and owned exclusively on the basis of natural law, of "the highest law." Why, then, is he so anxious to prove that property antedates civil society?<sup>107</sup>

The natural right to property is a corollary of the fundamental right of self-preservation; it is not derivative from compact, from any action of society. If everyone has the natural right to preserve himself, he necessarily has the right to everything that is necessary for his self-preservation. What is necessary for self-preservation is not so much, as Hobbes may seem to have believed, knives and guns as victuals. Food is conducive to self-preservation only if it is eaten, i.e., appropriated in such a manner that it becomes the exclusive property of the individual; there is then a natural right to some "private dominion exclusive of the rest of mankind." What is true of food applies *mutatis mutandis* to all other things required for

107. "There seems some inconsistency between this acceptance of 'consent' as the basis of actual property rights and the theory that government exists for the purpose of defending the natural right of property. Locke would doubtless have solved the contradiction by passing, as he constantly does, from the phraseology of the 'law of nature' to utilitarian considerations" (R. H. I. Palgrave, *Dictionary of Political Economy*, s.v. "Locke"). Locke does not have to "pass" from the law of nature to utilitarian considerations because the law of nature, as he understands it, namely, as the formulation of the conditions of peace and public happiness, is in itself "utilitarian."



self-preservation and even for comfortable self-preservation, for man has a natural right not only to self-preservation but to the pursuit of happiness as well.

The natural right of everyone to appropriate everything that is useful to him must be limited if it is not to be incompatible with the peace and preservation of mankind. That natural right must exclude any right to appropriate things which have already been appropriated by others; taking things which others have appropriated, i.e., harming others, is against the natural law. Nor does natural law encourage begging; need as such is not a title to property. Persuasion gives as little a title to property as does force. The only honest way of appropriating things is by taking them, not from other men, but directly from nature, "the common mother of all"; by making one's own what previously belonged to no one and therefore might be taken by anyone; the only honest way of appropriating things is by one's own labor. Everyone is by nature the exclusive owner of his body and hence of the work of his body, i.e., of his labor. Therefore, if a man mixes his labor—be it only the labor involved in picking berries—with things of which no one is the owner, those things become an indissoluble mixture of his exclusive property with no one's property, and therefore they become his exclusive property. Labor is the only title to property which is in accordance with natural right. "Man, by being master of himself and proprietor of his own person and the actions or labour of it, [has] in himself the great foundation of property."<sup>108</sup> Not society, but the individual—the individual prompted by his self-interest alone—is the originator of property.

Nature has set "a measure of property": there are natural law limitations to what a man may appropriate. Everyone may appropriate by his labor as much as is necessary and useful for his self-preservation. He may therefore appropriate in par-

108. *Treatises*, II, secs. 26–30, 34, 44.



particular as much land as he can use for tilling or grazing. If he has more than he can use of one kind of things (*a*) and less than he can use of another kind (*b*), he could make *a* useful to himself by bartering it away from *b*. Hence every man may appropriate by his labor not only what is in itself useful to him but also what could become useful to him if bartered away for other useful things. Man may appropriate by his labor all those things, but only those things, which are, or may become, useful to him; he may not appropriate things which through his appropriating them would cease to be useful; he may appropriate as much as he "can make use of to any advantage of life before it spoils." He may therefore accumulate many more nuts which "last good for his eating a whole year" than plums which would "rot in a week." As for things which never spoil and, in addition, are of no "real use," such as gold, silver, and diamonds, he may "heap" as much of them as he pleases. For it is not "the largeness" of what a man appropriates by his labor (or by bartering the products of his labor) but "the perishing anything uselessly in [his] possession" which makes him guilty of a crime against the natural law. He may therefore accumulate very little of perishable and useful things. He may accumulate very much of durable and useful things. He may accumulate infinitely much of gold and silver.<sup>109</sup> The terrors of the natural law no longer strike the covetous, but the waster. The natural law regarding property is concerned with the prevention of waste; in appropriating things by his labor, man must think exclusively of the prevention of waste; he does not have to think of other human beings.<sup>110</sup> *Chacun pour soi; Dieu pour nous tous.*

The law of nature regarding property, as hitherto summa-

109. *Ibid.*, secs. 31, 37, 38, 46.

110. Cf. *Ibid.*, secs. 40-44, with Cicero *Offices* ii. 12-14: the same type of example which Cicero uses for proving the virtue of man's helping man is used by Locke for proving the virtue of labor.



rized, applies only to the state of nature or to a certain stage of the state of nature. It is the "original law of nature" which obtained "in the first ages of the world" or "in the beginning."<sup>111</sup> And it obtained in that remote past only because the conditions in which men then lived required it. The law of nature could remain silent about the interests or needs of other men because these needs were taken care of by "the common mother of all"; however much a man might appropriate by his labor, there was "enough and as good left in common for others." The original law of nature was the dictate of reason in the beginning, because in the beginning the world was sparsely populated and there was "plenty of natural provisions."<sup>112</sup> This cannot mean that early men lived in a state of abundance showered upon them by their common mother; for if this had been the case, man would not have been compelled from the very beginning to work for his living, and the law of nature would not have prohibited so sternly every kind of waste. The natural plenty is only a potential plenty: "nature and the earth furnished only the almost worthless materials as in themselves"; they furnished "acorn, water, and leaves, or skins," the food and drink and clothing of the golden age or of the Garden of Eden, as distinguished from "bread, wine, and cloth." The natural plenty, the plenty of the first ages, never became actual plenty during the first ages; it was actual penury. This being the case, it was plainly impossible for man to appropriate by his labor more than the bare necessities of life or what was absolutely necessary for mere self-preservation (as distinguished from comfortable self-preservation); the natural right to comfortable self-preservation was illusory. But precisely for this reason, every man was forced to appropriate by his labor what he needed for his self-preservation without any

111. *Treatises*, II, secs. 30, 36, 37, 45. Consider the transition from the present tense to the past tense in secs. 32-51; consider especially sec. 51.

112. *Ibid.*, secs. 27, 31, 33, 34, 36.



concern for other men. For man is obliged to be concerned with the preservation of others only if and when "his own preservation comes not in competition."<sup>113</sup> Locke explicitly justifies man's natural right to appropriate and to own without concern for the needs of others by referring to the plenty of natural provisions which was available in the beginning; but such unconcern can be justified equally well on his principles if one assumes that men lived in a state of penury; and it must be justified in the latter manner, since Locke says that the only men to whom the original law of nature applied lived in a state of penury. It is the poverty of the first ages of the world which explains why the original law of nature (1) commanded appropriation by labor alone, (2) commanded the prevention of waste, and (3) permitted unconcern for the need of other human beings. Appropriation without concern for the need of others is simply justified because it is justified regardless of whether men lived in a state of plenty or in a state of penury.

Let us now consider that form of the law of nature regarding property which has taken the place of the original law of nature, or which regulates property within civil society. According to the original law of nature, man may appropriate by his labor as much as he can use before it spoils; no other limita-

113. *Ibid.*, secs. 6, 32, 37, 41, 42, 43, 49, 107, 110. Locke says that early men did not desire to have "more than man needed." But one must wonder whether "the needy and wretched" individuals who peopled the earth in the beginning always had what man needs. For the reason given in the text, man must have the natural right to appropriate by his labor what he needs for his self-preservation, regardless of whether or not there is enough left for others. The same reasoning seems to lead to the further conclusion that lawful appropriation cannot be limited to appropriation by labor; for in a state of extreme scarcity everyone may take away from others what he needs for mere self-preservation, regardless of whether or not the others starve. But this merely means that in a condition of extreme scarcity peace is altogether impossible, and natural law formulates how men have to act for the sake of peace, if peace is not altogether impossible: the natural law regarding property necessarily remains within the limits set to the law of nature as such. But in the misty wilds that stretch out beyond those limits, there exists merely the right of self-preservation, which is as precarious there as it is everywhere indefeasible.



tions are required because there is enough and as good left for others which has not yet been appropriated by anyone. According to the original law of nature, man may appropriate by his labor as much gold and silver as he pleases because these things are of no value in themselves.<sup>114</sup> In civil society almost everything has been appropriated; land in particular has become scarce. Gold and silver are not only scarce but, through the invention of money, they have become "so valuable to be hoarded up."<sup>115</sup> One should therefore expect that the original law of nature has been replaced by rules imposing much severer restrictions on appropriation than those which existed in the state of nature.<sup>116</sup> Since there is no longer enough and as good left in common for everyone, equity would seem to demand that man's natural right to appropriate as much as he can use should be restricted to the right to appropriate as much as he needs, lest the poor be "straitened." And, since gold and silver are now immensely valuable, equity would seem to demand that man should lose the natural right to accumulate as much money as he pleases. Yet Locke teaches exactly the opposite: the right to appropriate is much more restricted in the state of nature than in civil society. One privilege enjoyed by man in the state of nature is indeed denied to man living in civil society: labor no longer creates a sufficient title to property.<sup>117</sup> But this loss is only a part of the enormous gain which the right of appropriation makes after "the first ages" have come to their end. In civil society the right of appropriation is completely freed from the shackles by which it

114. *Ibid.*, secs. 33, 34, 37, 46.

115. *Ibid.*, secs. 45 and 48.

116. "The obligations of the law of nature cease not in society but only *in many cases* are drawn closer" (*ibid.*, sec. 135) (the italics are not in the original). The case of property does not belong to the "many cases" of which Locke speaks.

117. "Labour, *in the beginning*, gave a right to property" (*ibid.*, sec. 45); "labour could *at first begin* a title of property" (sec. 51); cf. also secs. 30 and 35 (the italics are not in the original).



was still fettered under Locke's original law of nature: the introduction of money has introduced "larger possessions and a right to them"; man may now "rightfully and without injury, possess more than he himself can make use of."<sup>118</sup> Although Locke stresses the fact that the invention of money has revolutionized property, he does not say a word to the effect that the natural right to heap as much gold and silver as one pleases has been affected by that revolution. According to the natural law—and this means according to the moral law—man in civil society may acquire as much property of every kind, and in particular as much money, as he pleases; and he may acquire it in every manner permitted by the positive law, which keeps the peace among the competitors and in the interest of the competitors. Even the natural law prohibition against waste is no longer valid in civil society.<sup>119</sup>

118. *Ibid.*, secs. 36, 48, 50.

119. Luigi Cossa, *An Introduction to the Study of Political Economy* (London, 1893), p. 242: Locke "escapes, by roundly asserting the productive power of labour, the old error of Hobbes, who counted the soil and thrift as components of production." According to Locke, the original law of nature regarding property remains valid in relations between civil societies, for "all commonwealths are in the state of nature one with another" (*Treatises*, II, secs. 183 and 184; cf. Hobbes, *De cive*, XIII, 11, and XIV, 4, as well as *Leviathan*, chaps. xiii [83] and xxx [226]). Hence the original law of nature determines the rights over the vanquished which the conqueror in a just war acquires; e.g., the conqueror in a just war does not acquire title to the landed property of the conquered, but he may take away their money as reparation for damages received, for "such riches and treasure . . . have but a fantastical imaginary value; nature has put no such upon them" (*Treatises*, II, secs. 180–84). In making this statement, Locke is not oblivious of the fact that money is immensely valuable in civil societies and that conquest presupposes the existence of civil societies. The difficulty is resolved by the following consideration: The primary function of Locke's disquisition on conquest is to show that conquest cannot give title to lawful government. He had, therefore, to show in particular that the conqueror does not become the lawful governor of the conquered by becoming the proprietor of their land; hence he had to stress the essential difference between land and money and the greater value for self-preservation of the former. Furthermore, he speaks in this context of a situation where trade and industry have come to a standstill, and not comfortable self-preservation but bare self-preservation (of the innocent part of the conquered people) is at stake. This situation is radically different from the situation which exists in the state of nature proper: in the former situa-



Locke does not commit the absurdity of justifying the emancipation of acquisitiveness by appealing to a nonexistent absolute right of property. He justifies the emancipation of acquisitiveness in the only way in which it can be defended: he shows that it is conducive to the common good, to public happiness or the temporal prosperity of society. Restrictions on acquisitiveness were required in the state of nature because the state of nature is a state of penury. They can safely be abandoned in civil society because civil society is a state of plenty: “. . . a king of a large and fruitful territory [in America] feeds, lodges, and is clad worse than a day-labourer in England.”<sup>120</sup> The day laborer in England has no natural right even to complain about the loss of his natural right to appropriate land and other things by his labor: the exercise of all the rights and privileges of the state of nature would give him less wealth than he gets by receiving “subsistence” wages for his work. Far from being straitened by the emancipation of acquisitiveness, the poor are enriched by it. For the emancipation of acquisitiveness is not merely compatible with general

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tion, the conqueror “hath, and to spare” and there is nothing left in common for use by the conquered; the conqueror is therefore under an obligation to be charitable (*Treatises*, II, sec. 183); but in the state of nature proper, either no one “hath, and to spare” or else there is enough left in common for other men. Locke refrains from discussing what conquerors may do if they do not “have, and to spare,” or, in other words, “when all the world is overcharged with inhabitants.” Since, according to his principles, the conquerors are under no obligation to consider the claims of the conquered if their own preservation comes into competition, he must have answered that question as Hobbes did: “then the last remedy of all is war; which provideth for every man, by victory, or death” (*Leviathan*, chap. xxx [227]; cf. *De cive*, Ep. ded.).

120. *Treatises*, II, sec. 41. “I look on a right of property—on the right of the individuals, to have and to own, for their own separate and selfish use and enjoyment, the produce of their own industry, with power freely to dispose of the whole of that in the manner most agreeable to themselves, as essential to the welfare and even to the continued existence of society . . . believing . . . with Mr. Locke that nature establishes such a right” (Thomas Hodgskin, *The Natural and Artificial Right of Property Contrasted* [1832], p. 24; quoted from W. Stark, *The Ideal Foundations of Economic Thought* [London, 1943], p. 59).



plenty but is the cause of it. Unlimited appropriation without concern for the need of others is true charity.

Labor no doubt supplies the original title to property. But labor is also the origin of almost all value: "labour makes the far greatest part of the value of things we enjoy in this world." Labor ceases to supply a title to property in civil society; but it remains, what it always has been, the origin of value or of wealth. Labor is eventually important, not as creating a title to property, but as the origin of wealth. What, then, is the cause of labor? What is it that induces men to work? Man is induced to work by his wants, his selfish wants. Yet what he needs for his bare self-preservation is very little and therefore does not require much work; the picking-up of acorns and the gathering of apples from trees suffice. Real work—the improvement of the spontaneous gifts of nature—presupposes that man is not satisfied with what he needs. His appetites will not be enlarged if his views are not enlarged first. The men of larger views are "the rational," who are a minority. Real work presupposes, furthermore, that man is willing and able to undergo the present hardship of work for the sake of future convenience; and "the industrious" are a minority. "The lazy and inconsiderate part of men" makes "the far greater number." The production of wealth requires, therefore, that the industrious and rational, who work hard spontaneously, take the lead and force the lazy and inconsiderate to work against their will, if for their own good. The man who works hard at improving the gifts of nature in order to have not merely what he needs but what he can use, and for no other reason, "does not lessen but increase the common stock of mankind." He is a greater benefactor of mankind than those who give alms to the poor; the latter lessen rather than increase the common stock of mankind. More than that. By appropriating as much as they can use, the industrious and rational reduce the extent of "the great commons of the world"



which lies waste; through "such enclosure," they create a kind of scarcity which forces the lazy and inconsiderate to work much harder than they otherwise would and thus to improve their own condition by improving the condition of all. But real plenty will not be produced if the individual does not have an incentive to appropriate more than he can use. Even the industrious and rational will relapse into the drowsy laziness so characteristic of early man, as long as their *amor habendi* can have no other objects than things which are useful in themselves, like fertile land, useful animals, and commodious houses. The labor required for creating plenty will not be forthcoming if there exists no money: "Find out something that hath the use and value of money among his neighbours, you shall see the same man will begin presently to enlarge his possessions" "beyond the use of his family and a plentiful supply to its consumption." While labor is then the necessary cause of plenty, it is not its sufficient cause; the incentive to that labor which is productive of real plenty is the acquisitiveness—the desire for having more than man can use—which comes into being through the invention of money. We must add the remark that that which money began comes to its fruition only through the discoveries and inventions fostered by natural science: "the study of nature . . . may be of greater benefit to mankind than the monuments of exemplary charity that have, at so great charge, been raised by the founders of hospitals and alms-houses. He that first . . . made public the virtue and right use of *kin-kina* . . . saved more from the grave, than those who built . . . hospitals."<sup>121</sup>

If the end of government is nothing but "the peace, the safety, and public good of the people"; if peace and safety are the indispensable conditions of plenty, and the public good of

121. *Treatises*, II, secs. 34, 37, 38, 40–44, 48–49; *Essay*, I, 4, sec. 15, and IV, 12, sec. 12; cf. Hobbes, *Leviathan*, chap. xxiv: "Money the blood of a commonwealth."



the people is identical with plenty; if the end of government is therefore plenty; if plenty requires the emancipation of acquisitiveness; and if acquisitiveness necessarily withers away whenever its rewards do not securely belong to those who deserve them—if all this is true, it follows that the end of civil society is “the preservation of property.” “The great and chief end . . . of men’s uniting into commonwealths and putting themselves under government is the preservation of their property.” By this central statement Locke does not mean that men enter civil society in order to preserve those “narrow bounds of each man’s small property” within which their desires were confined by “the simple, poor way of living” “in the beginning of things” or in the state of nature. Men enter society in order not so much to preserve as to enlarge their possessions. The property which is to be “preserved” by civil society is not “static” property—the small farm which one has inherited from one’s fathers and which one will hand down to one’s children—but “dynamic” property. Locke’s thought is perfectly expressed by Madison’s statement: “The protection of [different and unequal faculties of *acquiring* property] is the first object of government.”<sup>122</sup>

It is one thing to say that the end of government or of society is the preservation of property or the protection of the unequal acquisitive faculties; it is an entirely different thing and, as it would seem, an entirely superfluous thing to say, as Locke does, that property antedates society. Yet, by saying that property antedates civil society, Locke says that even civil property—the property owned on the basis of positive law—is in the decisive respect independent of society: it is not the creation of society. “Man,” i.e., the individual, has “still in himself the great foundation of property.” Property is cre-

122. *Treatises*, II, secs. 42, 107, 124, 131; *The Federalist*, No. 10 (the italics are not in the original). Cf. n. 104 above.



ated by the individual and in different degrees by different individuals. Civil society merely creates the conditions under which the individuals can pursue their productive-acquisitive activity without obstruction.

Locke's doctrine of property is directly intelligible today if it is taken as the classic doctrine of "the spirit of capitalism" or as a doctrine regarding the chief objective of public policy. Since the nineteenth century, readers of Locke have found it hard to understand why he used "the phraseology of the law of nature" or why he stated his doctrine in terms of natural law. But to say that public happiness requires the emancipation and the protection of the acquisitive faculties amounts to saying that to accumulate as much money and other wealth as one pleases is right or just, i.e., intrinsically just or by nature just. And the rules which enable us to distinguish between what is by nature just and by nature unjust, either absolutely or under specific conditions, were called the "propositions of the law of nature." Locke's followers in later generations no longer believed that they needed "the phraseology of the law of nature" because they took for granted what Locke did not take for granted: Locke still thought that he had to prove that the unlimited acquisition of wealth is not unjust or morally wrong.

It was indeed easy for Locke to see a problem where later men saw only an occasion for applauding progress or themselves, since in his age most people still adhered to the older view according to which the unlimited acquisition of wealth is unjust or morally wrong. This also explains why, in stating his doctrine of property, Locke "so involved his sense, that it is not easy to understand him" or went as much as possible "with the herd." While therefore concealing the revolutionary character of his doctrine of property from the mass of his readers, he yet indicated it clearly enough. He did this by occasionally mentioning and apparently approving the older view. He traced the introduction of "larger possessions and a



right to them" to "the desire of having more than man" needs, or to an increase in "covetousness," or to "*amor sceleratus habendi*, evil concupiscence." In the same vein he speaks disparagingly of "little pieces of yellow metal" and of "sparkling pebbles."<sup>123</sup> But he soon drops these *niaiserie*s: the burden of his chapter on property is that covetousness and concupiscence, far from being essentially evil or foolish, are, if properly channeled, eminently beneficial and reasonable, much more so than "exemplary charity." By building civil society on "the low but solid ground" of selfishness or of certain "private vices," one will achieve much greater "public benefits" than by futilely appealing to virtue, which is by nature "unendowed." One must take one's bearings not by how men should live but by how they do live. Locke almost quotes the words of the apostle, "God who giveth us richly all things to enjoy," and he speaks of "God's blessings poured on [man] with a liberal hand," and yet "nature and the earth furnish only the almost worthless materials as in themselves."<sup>124</sup> He says that God is "sole lord and proprietor of the whole world," that men are God's property, and that "man's propriety in the creatures is nothing but that liberty to use them which God has permitted"; but he also says that "man in the state of nature [is] absolute lord of his own person and possessions."<sup>125</sup> He

123. *Treatises*, II, secs. 37, 46, 51 end, 75, 111.

124. *Ibid.*, I, secs. 40, 43; II, secs. 31, 43. Cf. Locke's statements about the relative importance of the gifts of nature and human labor with a statement from Ambrose's *Hexaemeron*, translated by George Boas, in *Essays on Primitivism and Related Ideas in the Middle Ages* (Baltimore: Johns Hopkins Press, 1948), p. 42.

125. *Treatises*, I, sec. 39; II, secs. 6, 27, 123. Incidentally, it may be remarked that if "man in the state of nature [is] absolute lord of his own . . . possessions" or if property is "for the benefit and sole advantage of the proprietor," the natural right of children "to inherit the goods of their parents" (*ibid.*, I, secs. 88, 93, 97; II, sec. 190) is subject to the crucial qualification that the children have this right if the parents do not dispose of their property otherwise, as they may, according to Locke (I, sec. 87; II, secs. 57, 65, 72, 116 end). The natural right of the children to inherit their parents' property amounts, then, merely to this, that if the parents die intestate, it is assumed that they would have preferred their children to strangers as heirs of their estate. Cf. I, sec. 89, with Hobbes, *De cive*, IX, 15.



says that "it will always be a sin in any man of estate to let his brother perish for want of affording him relief out of his plenty." But in his thematic discussion of property, he is silent about any duties of charity.<sup>126</sup>

Locke's teaching on property, and therewith his whole political philosophy, are revolutionary not only with regard to the biblical tradition but with regard to the philosophic tradition as well. Through the shift of emphasis from natural duties or obligations to natural rights, the individual, the ego, had become the center and origin of the moral world, since man—as distinguished from man's end—had become that center or origin. Locke's doctrine of property is a still more "advanced" expression of this radical change than was the political philosophy of Hobbes. According to Locke, man and not nature, the work of man and not the gift of nature, is the origin of almost everything valuable: man owes almost everything valuable to his own efforts. Not resigned gratitude and consciously obeying or imitating nature but hopeful self-reliance and creativity become henceforth the marks of human nobility. Man is effectively emancipated from the bonds of nature, and therewith the individual is emancipated from those social bonds which antedate all consent or compact, by the emancipation of his productive acquisitiveness, which is necessarily, if accidentally, beneficent and hence susceptible of becoming the strongest social bond: restraint of the appetites is replaced by a mechanism whose effect is humane. And that emancipation is achieved through the intercession of the prototype of conventional things, i.e., money. The world in which human creativity seems to reign supreme is, in fact, the world which has replaced the rule of nature by the rule of con-

126. *Treatises*, I, sec. 42 (as for the use of the term "sin," cf. n. 90 above). Cf. *ibid.*, sec. 92: "Property . . . is for the benefit and *sole* advantage of the proprietor" (the italics are not in the original). As regards the mention of the duty of charity in the chapter on conquest (ii, sec. 183), see n. 119 above. Cf. n. 73 above.



vention. From now on, nature furnishes only the worthless materials as in themselves; the forms are supplied by man, by man's free creation. For there are no natural forms, no intelligible "essences": "the abstract ideas" are "the inventions and creatures of the understanding, made by it for its own use." Understanding and science stand in the same relation to "the given" in which human labor, called forth to its supreme effort by money, stands to the raw materials. There are, therefore, no natural principles of understanding: all knowledge is acquired; all knowledge depends on labor and is labor.<sup>127</sup>

Locke is a hedonist: "That which is properly good or bad, is nothing but barely pleasure or pain." But his is a peculiar hedonism: "The greatest happiness consists" not in enjoying the greatest pleasures but "in the having those things which produce the greatest pleasures." It is not altogether an accident that the chapter in which these statements occur, and which happens to be the most extensive chapter of the whole *Essay*, is entitled "Power." For if, as Hobbes says, "the power of a man . . . is his present means, to obtain some future apparent good," Locke says in effect that the greatest happiness consists in the greatest power. Since there are no knowable natures, there is no nature of man with reference to which we could distinguish between pleasures which are according to nature and pleasures which are against nature, or between pleasures which are by nature higher and pleasures which are by nature lower: pleasure and pain are "for different men . . . very different things." Therefore, "the philosophers of old did in vain inquire, whether *summum bonum* consisted in riches, or bodily delights, or virtue, or contemplation?" In the absence of a *summum bonum*, man would lack completely a star and

127. Speaking of a concession which his opponents ought not to make, Locke says: "For this would be to destroy that *bounty of nature they seem so fond of*, whilst they make the knowledge of those principles to depend on the *labour* of our thoughts" (*Essay*, I, 2, sec. 10) (the italics are not in the original).



compass for his life if there were no *summum malum*. "Desire is always moved by evil, to fly it."<sup>128</sup> The strongest desire is the desire for self-preservation. The evil from which the strongest desire recoils is death. Death must then be the greatest evil: Not the natural sweetness of living but the terrors of death make us cling to life. What nature firmly establishes is that from which desire moves away, the point of departure of desire; the goal toward which desire moves is secondary. The primary fact is want. But this want, this lack, is no longer understood as pointing to something complete, perfect, whole. The necessities of life are no longer understood as necessary *for* the complete life or the good life, but as mere inescapabilities. The satisfaction of wants is therefore no longer limited by the demands of the good life but becomes aimless. The goal of desire is defined by nature only negatively—the denial of pain. It is not pleasure more or less dimly anticipated which elicits human efforts: "the chief, if not only, spur to human industry and action is uneasiness." So powerful is the natural primacy of pain that the active denial of pain is itself painful. The pain which removes pain is labor.<sup>129</sup> It is this pain, and hence a defect, which gives man originally the most important of all rights: sufferings and defects, rather than merits or virtues, originate rights. Hobbes identified the rational life with the life dominated by the fear of fear, by the fear which relieves us from fear. Moved by the same spirit, Locke identifies the rational life with the life dominated by the pain which relieves pain. Labor takes the place of the art which imitates nature; for labor is, in the words of Hegel, a negative attitude toward nature. The starting point of human efforts is misery: the state of nature is a state of wretchedness. The way toward happiness is a movement away from the state of nature, a movement away from nature: the negation of nature is the way

128. *Essay*, II, 21, secs. 55, 61, 71; chap. 20, sec. 6.

129. *Treatises*, II, secs. 30, 34, 37, 42.



toward happiness. And if the movement toward happiness is the actuality of freedom, freedom is negativity. Just like the primary pain itself, the pain which relieves pain "ceaseth only in death." Since there are therefore no pure pleasures, there is no necessary tension between civil society as the mighty leviathan or coercive society, on the one hand, and the good life, on the other: hedonism becomes utilitarianism or political hedonism. The painful relief of pain culminates not so much in the greatest pleasures as "in the having those things which produce the greatest pleasures." Life is the joyless quest for joy.